The Application of the "Pragmatic Maxim" in Jewish Tradition: The Case of Rabbi Ḥayyim Hirschensohn*

Nadav S. Berman / *Ben-Gurion University of the Negev*

Are there purposes underlying the divine commandments, or *miẓvot*, in the Jewish case? May humans search for such sublime intentions? If so, should these reasons serve as a guide to the interpretation and performance of these *miẓvot*? If Jewish law (halakhah) indeed has a tendency toward purposiveness, as many scholars have argued,[1] to which extent does halakhah take humans to be its locus and human considerations to be a legitimate source of justification? This question occupied the minds of great thinkers, Jewish and others.[2] On one extreme, fundamentalist religious attitudes conceive God's commandment as strict immutable dictum, immune to ethical reasoning.[3] On the other extreme, some thinkers devalue human reasoning altogether.[4]

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[1] See, e.g., David Weiss Halivni, *Midrash, Mishnah, and Gemara: The Jewish Predilection for Justified Law* (Cambridge, MA: Harvard University Press, 1986).

[2] See Secs. II.B, III.C, and III.D, regarding *ta'amai ha-miẓvot*.

[3] Fundamentalist religious attitudes are not willing to pose elementary critical questions concerning the foundation of their belief. This is different from moderate foundationalists, who affirm the importance of foundations (and there being several foundations, rather than one only), while scrutinizing their validity, justification, and utility. On fundamentalism, which is a type of radical foundationalism, see James Barr, *Fundamentalism* (London: SCM, 1977). See also n. 12 below.

[4] Such a view seemingly has its source in some biblical verses that devalue humans, such as "What is man that You have been mindful of him?" (Ps. 8:5). Yet, there is an essential difference between that and the making of absurd into the guiding principle (see nn. 82 and 101 below).

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This article examines a moderate religious approach, which identifies human (or humane) merits in religion and simultaneously recognizes spiritual merits in the secular. Such an approach, I suggest, is found (significantly but not exclusively) within normative-laden Jewish tradition and in classical American pragmatism (CAP).[5] Such an integrative worldview characterizes CAP, and in relation to this philosophical school I wish to examine the links between Rabbi Ḥayyim Hirschensohn (RḤH; b. Safed, Israel, 1857; d. Hoboken, New Jersey, 1935) and the "Pragmatic Maxim" (PM), as a hermeneutic standard for interpreting and evaluating ideas and norms in Jewish thought. The main questions to be addressed below are, What is the PM, and how was it defined by the classical American pragmatists? What, to a first approximation, are the appearances of the PM in Jewish tradition? How was the PM applied by RḤH?

To address these questions, we will have to inquire about the conceptual relationship between Jewish thought and CAP in the realm of the history of ideas and about the basis for the more specific comparison between RḤH and CAP. How, then, can we define the relationship between the ideas found in Jewish thought and CAP?[6] It is important to emphasize that the basic aim of the current study is not historical but conceptual. There are, roughly, two main schools of thought for addressing this question: intellectual history and history of ideas.[7] Intellectual history searches for evident influence (or a "smoking philosophical gun") on the thinker at hand—RḤH, in the current case—as proving the influence they absorbed. The history of ideas, however, examines the shared human-intellectual arena, the universal realm of concepts, regardless of interpersonal engagements. Here I would like to explore

[5] Normative-laden Jewish tradition is distinct from radical spiritualist branches of Jewish tradition. Such attitudes are yet "normative laden'' insofar as they acknowledge the role of normativity and lawfulness (or halakhah). Compare Benjamin Brown, "Theoretical Antinomianism and the Conservative Function of Utopia: Rabbi Mordekhai Yosef of Izbica as a Case Study," *Journal of Religion* 99, no. 3 (2019): 312–40.

[6] Some would take such intercultural examination of two isms ("Judaism" in relation to CAP, in the current case) to be groundless. I rather follow Daniel Boyarin, who disagreed with those who view "each cultural formation as so heterogeneous that there are no important differences between cultures" (*Carnal Israel: Reading Sex in Talmudic Culture* [Berkeley: University of California Press, 1993], 22). Discerning intercultural proximities, therefore, should not be taken for granted either. Further questions apply to the suitability of the signifier "Judaism" to the signified phenomena it denotes. Susannah Heschel further suggested that the term "Judaism" was "invented by nineteenth-century Protestant theological discourse as a religion of legalism, literalism, and an absence of morality, and was made to function discursively as the abject of the Christian West." Heschel, "Revolt of the Colonized: Abraham Geiger's *Wissenschaft des Judentums* as a Challenge to Christian Hegemony in the Academy," *New German Critique* 77 (1999): 61–85, at 62. For a broader genealogical exploration, see Daniel Boyarin, *Judaism: The Genealogy of a Modern Notion* (New Brunswick, NJ: Rutgers University Press, 2018).

[7] For an assertion that there indeed is a shared human intellectual arena, see Arthur Lovejoy, *The Great Chain of Being* (New York: Harper & Row, 1965), 3–23. Space is short to review Quentin Skinner's critique of Lovejoy; the road taken here is an attempt to benefit from Lovejoy's methodology, without committing to his specific Platonist assumptions regarding the ontometaphysical existence of these ideas, separately from human intellectual construction.

both strategies and assume that regardless of RḤH's personal-intellectual exposure to CAP (see below) he was educated according to a rabbinic attitude that arguably reflects pragmatic ideas.[8] Was it the exposure to CAP that inspired RḤH toward an increased utilization of pragmatic ways of thinking? If RḤH indeed expressed pragmatic ideas, should we consider pragmatism to be entirely external to Jewish tradition? Or did RḤH's engagement with CAP help him in reclaiming pragmatic traditional ways of thinking? We explore these questions below.

The discussion will proceed as follows. Section I briefly defines CAP and the PM. Section II contextualizes the comparison between CAP and Jewish thought and tentatively demonstrates the nature and application of the PM in Jewish tradition. Section III presents RḤH's links to CAP and explores the application of the PM in his writings. The postscript (Sec. IV) reflects on why this pragmatist hermeneutical intuition—the PM—seems marginalized, at least on the explicit level, within Jewish thought in modern times.

I. PRAGMATISM

This section aims to clarify what pragmatism is, or more exactly what CAP was, and to define the meaning of the PM as its underlying religious intuition.

A. Classical American Pragmatism

Classical American pragmatism emerged as a distinct philosophical school at Harvard University, Massachusetts, in the last third of the nineteenth century, within the famous scholarly circle called "The Metaphysical Club."[9] The so-called founders or fathers of pragmatism, Charles Sanders Peirce, William James, and John Dewey, had an initial interest in the function of ideas in reality and in their impact on humans, society, and the world.[10] While the classical American pragmatists had various philosophical interests, they shared the nucleus of the following three philosophical concepts.[11]

[8] See Peter Ochs, *Peirce, Pragmatism, and the Logic of Scripture* (Cambridge: Cambridge University Press, 1998), 290–325; Hannah E. Hashkes, *Rabbinic Discourse as a System of Knowledge* (Leiden: Brill, 2015); and others.

[9] On the intellectual history of CAP, see Louis Menand, *The Metaphysical Club* (New York: Farrar, Straus & Giroux, 2001). However, Menand's description of the classical American pragmatists as antimetaphysical is problematic; see n. 17 below.

[10] As Horace S. Thayer wrote, "The individual thinkers who contributed most to the formation and articulation of pragmatism, Peirce, James and Dewey, were the three greatest philosophers America has yet produced." Thayer, *Meaning and Action: A Critical History of Pragmatism* (Indianapolis: Bobbs-Merrill, 1968), 3. See John E. Smith, *Purpose and Thought: The Meaning of Pragmatism* (New Haven, CT: Yale University Press, 1978), who succinctly defined pragmatism as a theory of truth as "dynamic correspondence" (77).

[11] Additional common denominators of CAP include meliorism, pluralism, centrality of the social, mind-body holism, and individual-society continuum. See Israel Scheffler, *Four Pragmatists* (London: Humanities, 1974), 8.

(1) Anti-Cartesianism is a rejection of Descartes's radical foundationalism and radical skepticism in favor of fallibilism.[12] (2) Fallibilism is a moderate or middle philosophical path, which is characterized by a "critical common sensism": "pragmatists hold that there is never a metaphysical guarantee . . . that such-and-such a belief will never need revision."[13] (3) The PM is the examination of metaphysical content according to its earthly consequences.

This article will focus on the third strand of thought, namely, the PM, as introduced within CAP. At the outset, it is vital to make a critical remark on a prevalent notion according to which the classical American pragmatists have rejected metaphysics entirely or had no initial interest in metaphysics.[14] In fact, the classical American pragmatists were neither antimetaphysical nor antitraditional; they had metaphysical and religious commitments (Protestant, in general). As Clifford Geertz has pragmatically written within the anthropological context, the metaphysical dimension is crucial for the understanding of any human culture, especially for apprehending religious attitudes.[15] The classical American pragmatists are no exception.

This observation concerning the indispensability of the metaphysical to pragmatism may come as a surprise because of the profound influence of self-professed pragmatists such as Richard Rorty, who posited that pragmatism is antimetaphysical and antitraditional.[16] However, various critiques were made concerning the circumvention of metaphysics (as well as the experiential element) from Rorty's thought and on this avoidance as incompatible with the pragmatist commitments of the classical American pragmatists.[17]

B. The Pragmatic Maxim

In the self-perception of the classical American pragmatists, the roots of their pragmatism were anchored in Greek philosophy and in the Christian

[12] On Descartes, see below. Foundationalism, in short, holds that achieving absolute certainty is not only the final goal of philosophizing but also a precondition for holding warranted beliefs. "Radical foundationalism" is no tautology, as there are various forms of foundationalism. The critiques of foundationalism (e.g., by D. Z. Philips) tend to disregard that constructive human knowledge necessitates a minimal doxastic basis (or what I term as moderate foundationality). Hence, there is the distinction between radical and moderate foundationalism.

[13] Hilary Putnam, *Words and Life*, ed. J. Conant (Cambridge, MA: Harvard University Press, 1995), 152. On fallibilism in Jewish thought, see Nadav S. Berman, "Pragmatism and Jewish Thought: Eliezer Berkovits's Philosophy of Halakhic Fallibility," *Journal of Jewish Thought and Philosophy* 27, no. 1 (2019): 86–135.

[14] On prevalent misguided notions regarding CAP, see F. Thomas Burke, *What Pragmatism Was* (Bloomington: Indiana University Press, 2013), ix–xii, 143–60.

[15] See Clifford Geertz, *The Interpretation of Cultures* (New York: Basic, 1973), 87–141, esp. 90–91.

[16] See, e.g., Richard Rorty, *Consequences of Pragmatism* (Minneapolis: University of Minnesota Press, 2001), viii–xlvii.

[17] See Abraham Edel, "A Missing Dimension in Rorty's Use of Pragmatism," *Transactions of the C. S. Peirce Society* 21, no. 1 (1985): 21–37; Mark Johnson, "Experiencing Language: What's Missing in Linguistic Pragmatism?," *European Journal of Pragmatism and American Philosophy* 6, no. 2 (2014): 14–27. Proximal reservations were made concerning the idealism of Robert Brandom. See Steven Levine, *Pragmatism, Objectivity, and Experience* (New York: Cambridge University Press, 2019).

Bible. Peirce, for example, argued that "the rivulets at the head of the river of pragmatism are easily traced back to almost any desired antiquity. Socrates bathed in these waters. Aristotle rejoices when he can find them" and that "all pragmatists will further agree that their method . . . being itself nothing but a particular application of an older logical rule, 'By their fruits ye shall know them.'"[18] Since Peirce referred here to the New Testament (Matt. 7:16), the reader might disregard the Jewish roots of this maxim. The verse from Matt. 7:16 alludes to Deut. 18:22, which provides a distinction between true and false prophets.[19] The former prophets are verified if their prophecy is fulfilled, whereas the false prophets' forecasts are not expected to actualize. Since Peirce's attribution of the pragmatist maxim to the New Testament might misguidedly be interpreted to mean that the PM is exclusively Christian, it is important to single out this indebtedness of Matthew 7 to Deuteronomy 18.[20] (Here and elsewhere it seems that there is much research left to explore the Jewish roots of CAP.[21])

CAP had its roots in Western philosophy, while nevertheless being critical toward certain philosophical thinkers and schools. One of them is the idealistic Platonist tradition, from which Western philosophy originated, which considered truth as perennial and consequently undermined earthly human knowledge as fallacious.[22] Another philosopher who was criticized by the classical American pragmatists is René Descartes, the father of modern philosophy, who was a radical foundationalist.[23] Interestingly, Descartes aimed to construct a strict foundational worldview, by casting hyperbolic doubt.[24]

Pragmatism, which evolved as part of the nineteenth-century "revolt against dualism," and more specifically protested the dualist Cartesian framework,

[18] *Collected Papers of Charles Sanders Peirce*, vol. 5, ed. C. Hartshorne and P. Weiss (Cambridge, MA: Harvard University Press, 1934), secs. 264, 465.

[19] For a relevant commentary, see Herbert W. Basser with Marsha B. Cohen, *The Gospel of Matthew and Judaic Traditions: A Relevance-Based Commentary* (Boston: Brill, 2015), 209.

[20] The notion that practical implications reveal the meaning of ideas, for they (implications) explicate in some sense the yet-unknown nature of ideas, has its source in the Hebrew Bible (see Exod. 3:14—"eheyeh asher eheyeh"—I am who I will be/become). See Jonathan Sacks, *Future Tense* (New Milford, CT: Maggid, 2021), 231–52; and Charles Hartshorne, *The Divine Relativity: A Social Conception of God* (New Haven, CT: Yale University Press, 1948). On the PM in Jewish tradition, see Sec. II.B below.

[21] See Paul W. Franks, "Peirce's 'Schelling-Fashioned Idealism' and 'The Monstrous Mysticism of the East,'" *British Journal for the History of Philosophy* 23 (2015): 732–55, which traces the indebtedness of Peirce's idea of evolutionism to sixteenth-century Lurianic Kabbalah.

[22] See the allegory of the Cave in Plato, *The Republic*, trans. P. Shorey (London: Heinemann, 1930–35), bk. VII, 514a–520a, 119–41.

[23] René Descartes, *Meditations on First Philosophy*, trans. J. Cottingham (Cambridge: Cambridge University Press, 1996). See the critique of Descartes in Peirce's "Some Consequences of Four Incapacities," *Collected Papers*, secs. 264–65, and also the review of Peirce in Scheffler, *Four Pragmatists*, 42–55.

[24] Descartes, *Meditations*, 12–15, 37–43, 48–49. This bidirectional maneuver, of radical foundationalism and radical skepticism, is in fact mutually supportive. On the initial problematic of unifying the many existential doubts into a single hyperbolic doubt, see my review essay "How to Live Communally amidst Doubts: Moshe Halbertal, *The Birth of Doubt: Confronting Uncertainty in Early Rabbinic Literature* (2020)," *Review of Rabbinic Judaism* 24 (2021): 265–75.

walked a different path.[25] Peirce, the so-called founder of pragmatism, formulated the PM in the following manner: "Consider what effects, that might conceivably have practical bearings, we conceive the object of our conception to have. Then, our concept of these effects is the whole of our conception of the object."[26] Peirce asserted that the full scope of concepts should encompass their worldly implications. This clearly involves a utilitarianism of some sort (a more traditional one, i.e., not antimetaphysical and not reductionist). To Peirce, the PM deliberates not only the abstract concept but also the way by which concepts manifest in the natural world, namely, their consequences.[27] In this manner, Peirce wrote: "The elements of every concept enter into logical thought at the gate of perception and make their exit at the gate of purposive action; and whatever cannot show its passports at both those two gates is to be arrested as unauthorized by reason."[28]

Peirce had additional formulations of the PM (or principle). After James and F. C. S. Schiller came out with their definitions of pragmatism, Peirce published several articles in which he clarified the difference between his pragmatism and theirs. The main difference revolves the place of logical reasoning in the formation of the PM. To Peirce that was a crucial point, and he therefore wanted to differentiate his version of pragmatism and coined it "Pragmati*ci*sm."[29] Peirce thus dedicated the articles "What Pragmatism Is" and "Issues of Pragmaticism" to clarify his logical-laden version of the PM.[30] However, as much as it comes to religious content, Peirce's application of the PM remained limited in scope.[31]

William James moved the center of mass of the PM to the realm of utility, when he claimed that "truth is what works."[32] According to James, the "cash

[25] See Arthur O. Lovejoy, *The Revolt against Dualism* (London: Allen & Unwin, 1930), 34–78.

[26] Peirce, *Collected Papers*, sec. 402. Compare Peirce's "How to Make Our Ideas Clear" (1878), *Collected Papers*, secs. 388–410. On the PM, see Scheffler, *Four Pragmatists*, 76–82; and Yemima Ben-Menaḥem, "Introduction," in William James, *Pragmatism*, trans. G. Elgat [in Hebrew] (Tel Aviv: Resling, 2010), 7–31, at 14–17.

[27] Differently from consequentialism, which tends to examine issues only according to their appearances, in pragmatism the theoretical realm is principal. On the consequentialism of Mill, Bentham, Sidgwick, and others, see Stephen Darwall, *Consequentialism* (Malden, MA: Blackwell, 2003).

[28] Peirce, "The Two Functions of Pragmatism," *Collected Papers*, secs. 206–12, at par. 212 (p. 131).

[29] Peirce, *Collected Papers*, sec. 414. See Christopher Hookway, *Peirce* (London: Routledge, 1985), 234–61. For a fuller account of the PM, see Hookway's *The Pragmatic Maxim: Essays in Peirce and Pragmatism* (Oxford: Oxford University Press, 2012), 165–234.

[30] Peirce, *Collected Papers*, secs. 411–37, 438–63.

[31] See Michael L. Raposa, *Peirce's Philosophy of Religion* (Bloomington: Indiana University Press, 1989). Raposa does not discuss the PM within Peirce's religious theory. For a claim that Peirce had difficulty reinterpreting his religious sources pragmatically, see Peter Ochs, "Charles Peirce's Unpragmatic Christianity: A Rabbinic Appraisal," *American Journal of Theology and Philosophy* 9, nos. 1–2 (1988): 41–74.

[32] See William James, *Pragmatism and Four Essays from "The Meaning of Truth"* (New York: New American Library, 1974), 54. On the indispensable role of experience in James's pragmatism, and the parallel indispensability of the metaphysics, see David C. Lamberth, *William James and the Metaphysics of Experience* (New York: Cambridge University Press, 1999), 23–31, 57–60, 71–73.

value” of a certain belief is its practical value in life.[33] James advocated the positive influence religion has on life, specifically the vitality of religious experience and the nourishing of moral character.[34] James contended that the test of metaphysics is holistic and found on the earthly realm: “If theological ideas prove to have a value for concrete life, they will be true, for pragmatism, in the sense of being good for so much. For how much more they are true, will depend on their relations to the other truths that also have to be acknowledged.”[35] This Jamesian emphasis on the earthly realm puts him in a different place than Blaise Pascal, whose famous wager centered on the otherworldly and the afterlife.[36] James’s belief in a benevolent divinity is contrasted to prototypically gnostic conceptions of God—and more specifically, of the creator God—as malicious.[37] Contrastingly to Gnosticism, the PM assumes that positive real-life consequences are typically a mark or at least possibly testify for some deep truths. James’s late career doctrine of Radical Empiricism notwithstanding, the pursuit of truth is predicated on the premise that there is such a thing as truth and that, even if many segments of human life are mind dependent, principles and universals do exist. In James’s own words, “no one can live an hour without both facts and principles.”[38]

John Dewey, whose philosophical perspective was more social, naturalistic, and secular (while nevertheless acknowledging the importance of the PM in the religious dimension as well), expanded the application of the PM to the scientific, democratic, and educational contexts.[39] Dewey asserted that

[33] Similar to the misconception concerning CAP (see Burke, *What Pragmatism Was*), a clarification is required about the PM. For the classical American pragmatists, the PM implies that metaphysical content is measured not by some narrow individualistic benefit but rather in consideration of the social, religious, and ethical good. See my forthcoming “Interest, Disinterestedness, and Pragmatic Interestedness: Jewish Contributions to the Search for a Moral Economic Vision,” in *The Spirit of Conscious Capitalism: Contributions of World Religions and Spiritualities*, ed. M. Pava and M. Dion (Dordrecht: Springer, 2023).

[34] Namely meliorism, or realistic optimism. See James, *Pragmatism*, 179–86.

[35] James, *Pragmatism*, 57.

[36] This is evident primarily in James’s formative 1896 essay “The Will to Believe.” Compare Norman Wilde, “The Pragmatism of Pascal,” *Philosophical Review* 23, no. 5 (1914): 540–49; Michael Slater, *William James on Ethics and Faith* (New York: Cambridge University Press, 2009), 219–35.

[37] See Hans Jonas, *The Gnostic Religion* (Boston: Beacon, 1963). The meaning of the term Gnosticism has shifted in recent decades and is often perceived in a broader sense than Jonas did. As Oded Yisraeli observes in his article “Cain as the Scion of Satan: The Evolution of a Gnostic Myth in the Zohar,” *Harvard Theological Review* 109, no. 1 (2016): 56–74, the relationship between Judaism and Gnosticism, to their branches and perceptions, depends very much on intellectual agendas (57).

[38] See James, *Pragmatism*, 20. That is also why James asserted that a person may be a pragmatist regardless of adopting James’s radical empiricism (which is akin to radical pluralism); see *Pragmatism*, 14. This tension deepens considering the arguments by Robert B. Talisse and Scott F. Aikin concerning the tension between pragmatism and radical pluralism. See Robert B. Talisse and Scott F. Aikin, *Pragmatism, Pluralism, and the Nature of Philosophy* (New York: Routledge, 2018), 167–78.

[39] On his philosophical perspective, see John Dewey, *A Common Faith* (New Haven, CT: Yale University Press, 1960), 14. On the expanded application of the PM, see, e.g., John Dewey, *Logic: The Theory of Inquiry* (New York: Holt, 1938), 83.

"democracy has many meanings, but if it has a moral meaning, it is found in resolving that the supreme test of all political institutions and industrial arrangements shall be the contribution they make to the all-around growth of every member of society."[40]

Differently from some commentators who identify CAP with latter-day (typically neo-Hegelian) linguistic pragmatism, Richard J. Bernstein insists that pragmatism without experiential reach loses its reality-engaging commitments and ultimately its pragmatist character.[41] Yet pragmatism is indebted to idealism, and this is compatible with the fact that Peirce, James, and Dewey indeed had metaphysical and religious commitments.

The initial idea concerning the connections between concepts and consequences was expressed in the early 1950s by Ludwig Wittgenstein in his *On Certainty*, even though it applies predominantly to the natural realm rather than the metaphysical.[42] The pragmatist emphasis on the mutual dependency of empirical facts and metaphysical propositions was later developed by W. V. O. Quine in his renowned article "Two Dogmas of Empiricism," which offered a holistic pragmatist paradigm.[43]

C. The Pragmatic Maxim: A Synthetic Outlook

According to the classical American pragmatists, then, the PM—"truth is what works"—was not a narrowly instrumentalist or naturalist truth test. It rather implied that metaphysical religious ideas, concepts, and beliefs are examined "by their fruits" (Matt. 7:20) in this world (this "fruitability" requires more elaboration than I can provide here). The PM is thus a bottom-up philosophical intuition. At the same time its philosophical sustainability is conditioned on assuming the realness of top-down. This metaphysically anchored worldliness (or moderate foundationalism) locates pragmatism as contrasted to medieval and modern supersessionist forms of otherworldliness or exclusive

[40] John Dewey, *Reconstruction in Philosophy* (Boston: Beacon, 1948), 186. To Dewey's mind, the democratic ethos is an essential mean for improving the individual, the collective, and the interactions between them. See his *Democracy and Education* (New York: Macmillan, 1953), 142. This kind of emphasis on sociality, it should be noted, is by no means antitheistic; cf. Hartshorne, *Divine Relativity*. Hartshorne views God as supreme and absolute and yet as relational.

[41] See Richard J. Bernstein, *The Pragmatic Turn* (Cambridge: Polity, 2010), 125–52. It is noteworthy in this regard that the seeming contrast between the Kantian idealist trajectory and pragmatism is softened once acknowledging that there are in Kant's thought various pragmatic aspects that later developed in CAP. In recent years there is an increasing interest in the Kantian sources of CAP and, conversely, in Kant's protopragmatism. See, e.g., Gabriele Gava and Robert Stern, eds., *Pragmatism, Kant, and Transcendental Philosophy* (New York: Routledge, 2016); Sami Pihlström and Krzysztof Skowronski, eds., *Pragmatist Kant: Pragmatism, Kant, and Kantianism in the Twenty-First Century* (Helsinki: Nordic Pragmatism, 2019).

[42] See Anna Boncompagni, *Wittgenstein and Pragmatism* (London: Palgrave Macmillan, 2016), 139–80.

[43] W. V. O. Quine, "Two Dogmas of Empiricism," *Philosophical Review* 60 (1951): 20–43. On neopragmatist contextualism, see Yonatan Y. Brafman, "Critical Philosophy of Halakha: The Justification of Halakhic Norms and Authority" (PhD diss., Columbia University, 2014), 358–74.

zero-sum games in which one must take sides: either this world or the other, either physics or metaphysics (call it Ontological Exclusionism).[44] CAP is rather an ontologically inclusive philosophy.

A reconstructed definition of the PM in the writings of the classical American pragmatists is thus: a consideration of metaphysical issues by their ethical-worldly implications and consequences on humans, society, and the world. Here we should distinguish between a PM in the broad sense, which deems mere earthly success as a testifying for metaphysical goodness (this sense of PM is not intended here), and PM in a narrow sense, which conditions success on moral tests yet without glorifying misery.[45] Ethics thus has a primacy within CAP.[46] Similar to the Hebrew Bible, in CAP it is usually assumed that the ontological calculus, or divine will, takes place within this world, as distinct from other-worldly calculus.[47] As we learn from Martin Luther's objection to St. Matthew's aforementioned fruits metaphor, the pragmatist idea of the observable world as reflective of metaphysical truths is not trivial.[48]

The PM was constructed in the pragmatist tradition as an ethical corrective or standard for evaluating morally problematic religious norms. This evaluative intuition is found in William E. Hocking's notion of Negative Pragmatism, according to which pragmatism is not only a positive verification of truths that "work" but also a way of determining the falsity of that which does not work, mainly on ethical grounds.[49] Hocking followed John Locke, who saw reason as complementary to revelation and as a negative criterion for examining religious content.[50] Both Locke and Hocking seem to inherit the well-rooted

[44] On foundationalism, see nn. 3 and 12 above. On otherworldliness, see R. Kendall Soulen, *The God of Israel and Christian Theology* (Minneapolis: Fortress, 1996), 1–24. See the contention by Søren Kierkegaard: "therefore love of God is hatred of the world and love of the world hatred of God" ("The Lily of the Field and the Bird of the Air: Three Godly Discourses," in his *Upbuilding Discourses in Various Spirits*, ed. and trans. H. V. Hong and E. H. Hong [Princeton, NJ: Princeton University Press, 2009], 205).

[45] For some elaboration on the broad and narrow senses of pragmatism, see my "20th Century Jewish Thought and Classical American Pragmatism: New Perspectives on Ḥayyim Hirschensohn, Mordecai M. Kaplan, and Eliezer Berkovits" [in Hebrew] (PhD diss., Hebrew University, 2018), 48–50.

[46] See Albert Schinz, "Jean Jacques Rousseau: A Forerunner of Pragmatism," *Monist* 19, no. 4 (1909): 481–513, at 482; Ruth Anna Putnam, "The Moral Impulse," in *The Revival of Pragmatism*, ed. M. Dickstein (Durham, NC: Duke University Press, 1998), 61–71; Sandra B. Rosenthal, "A Time for Being Ethical: Levinas and Pragmatism," *Journal of Speculative Philosophy* 17, no. 3 (2003): 192–203.

[47] See William James, "The Moral Philosopher and the Moral Life," *International Journal of Ethics* 1, no. 3 (1891): 330–54, referring (354) to the verse "not in heaven" (Deut. 30:12).

[48] Luther states: "It is true that, when considered on only a human level, works make a person good or bad. But this . . . is an outward or external one, as indicated by the words of Christ in Matthew 7:20: 'Thus you will know them by their fruits.' All of this remains on the surface, however." Martin Luther, "The Freedom of the Christian," in *Martin Luther's Basic Theological Writings*, ed. T. F. Lull and W. Russel (Minneapolis: Fortress, 2012), 417.

[49] William E. Hocking, *The Meaning of God in Human Experience* (New Haven, CT: Yale University Press, 1912), xiii. On Hocking, see Bruce Kuklick, *The Rise of American Philosophy* (New Haven, CT: Yale University Press, 1979), 481–95.

[50] That is how Locke puts it in his "Letter Concerning Toleration": "He [God] leaves all his [human] faculties in their natural state, to enable us to judge his aspirations. . . . When he [God]

classical Aristotelian theory of phronesis, or the adaptation of positive law to changing circumstances, in light of values, such as equity (Greek: ἐπιείκεια, epieikeia).[51] Those insights would not surprise scholars who recognize CAP's sense of "philosophical traditionism."[52] Contrary to yet another common misconception, the classical American pragmatists neither eliminated philosophy altogether nor gave up the pursuit of truth.[53] Since religious content is traditionally conceived as divine or metaphysical in its origin, Locke's and Hocking's hermeneutical intuitions manifest the PM. Metaphysical data, religious included, are thus evaluated by our best human understanding, not contrary to it. In legal pragmatism too we find such deliberation, although from a more naturalist methodological perspective.[54]

Here there is an interesting tension between the PM of the classical American pragmatists and their Protestant background. This tension is apparent especially when considering the emphasis of the classical American pragmatists on the indispensability of bodily practice, which seems vital for the ability to enact the PM.[55] Consider the case of Martin Luther, to whom the earthly human standing before God (let alone confrontation with God) becomes very much impossible.[56] An important implicit application of the PM does appear in Luther's writings, but his submissive theological anthropology seemingly

illuminates the [human] mind with supernatural mind, he does not extinguish that which is natural. Reason must be our last judge and guide in everything . . . whether it be a revelation from God or not" (cited by Nicholas Wolterstorff, *John Locke and the Ethics of Belief* [New York: Cambridge University Press, 1996], 120–21). For a Jewish reference to Locke in this regard, see Eliezer Berkovits, *God, Man, and History* (New York: David, 1959), 11 n. 27, and compare the quote from Kook cited in n. 116 below.

[51] See Aristotle, *Nicomachean Ethics*, trans. D. Ross (New York: Oxford University Press, 2009), bk. VI, 102–17. On phronesis in the context of halakhic interpretation, see Christine E. Hayes, *What's Divine about Divine Law? Early Perspectives* (Princeton, NJ: Princeton University Press, 2015), 324–27; Elisha Ancselovits, "Second Temple Phronetic Jewish Law," *Jewish Law Association Studies* 26 (2017): 152–89. Compare Max Hamburger, *Morals and Law: The Growth of Aristotle's Legal Theory* (New York: Biblo & Tanner, 1965), 89–105; and Hayes, *What's Divine*, 66–70.

[52] On "traditionism" as distinct from tradition*al*ism, see Yaacov Yadgar, *Sovereign Jews: Israel, Zionism, and Judaism* (Albany, NY: SUNY Press, 2017), 1–64. On CAP as engaging with and inheriting from past philosophical traditions, rather than superseding them, see chap. 1 of my "20th Century Jewish Thought," 41–80.

[53] I refer mainly to Heidegger's and Rorty's interpretations of Dewey (see n. 17 above). In this regard, I tend to agree with those who see Peircean pragmatism as an essential part of CAP, e.g., Cheryl Misak, *Truth and the End of Inquiry* (New York: Oxford University Press, 2004). For a critique of Rorty's argument that Peirce is marginal to CAP, see Susan Haack, *Manifesto of a Passionate Moderate* (Chicago: University of Chicago Press, 1998), 31–47.

[54] For example, see Oliver Wendell Holmes Jr., "The Path of the Law," *Harvard Law Review* 10 (1897): 457–78.

[55] This, in contrast to undermining the genuineness of bodily practice to religiosity, as found in St. Paul and in many adherents of this approach. See Paula Fredriksen, *Paul: The Pagans' Apostle* (New Haven, CT: Yale University Press, 2017), 94–130.

[56] As Erich Fromm observed: "Luther's relationship to God was one of complete submission. In Psychological terms his concept of faith means: if you completely submit, if you accept your individual insignificance, then the all-powerful God may be willing to love you and save you. . . . Thus, while Luther freed people from the authority of the [Catholic] Church, he made them submit to a much more tyrannical authority." Fromm, *Escape from Freedom* (New York: Rinehart, 1941), 81.

prevents the enactment of the PM as found in the Hebrew Bible (see Sec. II.B below).[57] In CAP, however, there is indeed an emphasis on both human corporeality and moral discretion—these are prerequisites for the application of the PM. In a paraphrase of Robert B. Brandom's idea of CAP as the "Pragmatist Enlightenment" and on Peter Ochs's "Another Reformation," we can think of CAP as a Second Reformation, which reclaims corporeal human rootedness.[58] The classical American pragmatists, so it seems, paved a pioneering middle philosophical road between Catholicism and Protestantism.[59]

In this section I introduced CAP, the PM that lies in its midst, and its religious bearings, its evaluation of metaphysical content by considering its worldly manifestations. Do we find the PM in Hirschensohn's thought? To answer this question, given that Hirschensohn (similar to any other halakhic sage) worked with traditional content, we must have an idea of how the PM is applied within Jewish tradition. To provide this background for the examination of RḤH's thought (Sec. III), the following section ventures to tentatively map the applications of the PM within Jewish tradition.

II. PRAGMATISM AND JEWISH THOUGHT

This section briefly explores the relationship between CAP and Jewish thought and offers a bird's-eye topography of the PM in Jewish tradition. This religio-intellectual genealogy will clarify what are the traditional resources that Hirschensohn used when developing his thought. This genealogy also aims to present the basic pragmatist infrastructure that is relevant for understanding various other thinkers, Jewish and Abrahamic. As a caveat, it should be emphasized that pragmatism is not universal in the sense of being a monolithic, context-immune doctrine. Rather, each religion or culture is (or may be) pragmatically considering its own traditional beliefs and goals, as Peter Ochs asserts: "Pragmatism, I might add, is not about worldly success, but about worldly embodiment. The question is 'embodiment of what?' . . . [In CAP] success is measured only according to the values that are given elsewhere. In the case of Torah, pragmatic success would be measured by the embodiment of Torah in those who seek it. . . . Those are judgments made

[57] "We should regard Moses as a teacher, but we will not regard him as our lawgiver—unless he agrees with both the New Testament and the natural law." Luther, "How Christians Should Regard Moses," in *Martin Luther's Basic Theological Writings*, 1. This trajectory was maintained in Immanuel Kant, *Religion within the Boundaries of Mere Reason*, trans. A. Wood and G. di Giovanni (New York: Cambridge University Press, 1998). See the remarks by David Sorotzkin, *Orthodoxy and Modern Disciplination* [in Hebrew] (Tel Aviv: HaKibbuẓ haMe'uḥad, 2011), 157.

[58] Robert B. Brandom, *Perspectives on Pragmatism: Classical, Recent, and Contemporary* (Cambridge, MA: Harvard University Press, 2011), 35–55. Peter Ochs, *Another Reformation: Postliberal Christianity and the Jews* (Grand Rapids, MI: Baker, 2011).

[59] Compare Ulf Zackariasson, "Pragmatism and the Moral Critique of Religion," *American Journal of Theology and Philosophy* 31, no. 1 (2010): 3–14. The above hypothesis deserves an elaboration that clearly exceeds this article.

only by way of and within Talmud [study of] Torah."[60] This awareness of the context sensitivity of what pragmatism and the PM mean (and could mean) in various contexts is vital, as we turn to briefly review its manifestations in Jewish tradition.

A. Pragmatism and Jewish Thought in the History of Ideas

Following Richard J. Bernstein, my supposition is that there is nothing exclusively American in CAP. Rather, it "has a more universal and global reach."[61] I thus undertake to explore the intellectual affinities between CAP and Jewish thought more closely in this section, in the context of the PM.

Harry Austryn Wolfson long ago argued that there are deep connections between Jewish thought and CAP.[62] Although in the larger picture the intersections between them have received only limited scholarly attention, in recent decades various scholars have recognized the profound place of pragmatism in Jewish thought.[63] Notable contributions in articulating links between Jewish thought and CAP (and later American pragmatism) have been made by Peter Ochs, Mel Scult, Menachem Fisch, Hannah E. Hashkes, Yonatan Y. Brafman, Avinoam Rosenak, Ariel Furstenberg, Martin Kavka, Micah Goodman, and others.[64] Let us turn to the more specific case of the PM.

[60] Peter Ochs, "Pragmatism and the Logic of Jewish Political Messianism," in *Pragmatic Studies in Judaism*, ed. A. Schumann (Piscataway, NJ: Gorgias, 2013), 135–78, at 168.

[61] Richard J. Bernstein, *The Abuse of Evil* (Malden, MA: Polity, 2005), 42.

[62] See Harry Austryn Wolfson, "Maimonides and Halevi: A Study in Typical Jewish Attitudes towards Greek Philosophy in the Middle Ages," *Jewish Quarterly Review* 2 (1911–12): 297–337. After comparing what Wolfson considers the "Hellenized" thought of Maimonides and the "empirical pragmatic" thought of Halevi, Wolfson concludes that "Contemporary thought, the whole pragmatic movement, may find its visions foreshadowed in Halevi's discussions" (337).

[63] One reason for the limited scholarly attention is the misconceptions regarding what CAP is or was; see Burke, *What Pragmatism Was*. On Mordecai Kaplan's pragmatic attitude as characterizing many modern Jewish thinkers, see Paul Mendes-Flohr, "Wissensbilder im Modernen Jüdischen Denken," in *Wissenbilder: Strategien der Überlieferung*, ed. U. Rauff and G. Smith (Berlin: Akademie, 1999), 221–39.

[64] See Ochs, *Peirce*, 290–325. Here and in numerous articles, Ochs addresses questions of Jewish normativity from a Peircean perspective. See Mel Scult, *The Radical American Judaism of Mordecai M. Kaplan* (Bloomington: Indiana University Press, 2013), comparing Kaplan with Emerson, James, and Dewey. See Menachem Fisch, "The Talmudist Enlightenment: Talmudic Judaism's Confrontational Rational Theology," *European Journal for Philosophy of Religion* 12, no. 2 (2020): 1–27, which portrays the religious daring of the talmudic bottom-up discourse vis-à-vis American pragmatism. See Hashkes, *Rabbinic Discourse*. Hashkes uses a Peircean pragmatist perspective to clarify basic concepts in normative Jewish tradition. See Brafman, "Critical Philosophy of Halakha," and Brafman's forthcoming book that is based on this rigorous doctoral work. See Avinoam Rosenak, "Truth Tests, Educational Philosophy, and Five Models of the Philosophy of Jewish Law," *Hebrew Union College Annual* 78 (2009): 149–82, demonstrating the pragmatist test in halakhah (152–64). See Ariel Furstenberg, "Tradition and Conceptual Dynamics According to an Inferentialist Theory of Meaning," *European Journal for Philosophy of Religion* 8, no. 2 (2016): 221–41, which offers a Brandomian account of halakhic change processes. See Martin Kavka, "Rational Neopragmatist Rabbis," in *The Future of Jewish Philosophy*, ed. Ḥ. Tirosh-Samuelson and A. W. Hughes (Leiden: Brill, 2018), 151–69, which presents Menachem Fisch's work as pragmatist (see also n. 96 below). See Micah Goodman, *The King's Dream* [in Hebrew] (Or-Yehudah: Dvir, 2012), 213–64, and various other books by Goodman.

B. The Pragmatic Maxim in Jewish Tradition: A Brief Exploration

What justifies the examination of the PM within Jewish thought? The PM is presumably relevant to philosophy and epistemology, while halakhic texts are akin to law and ethics. However, both Jewish thinkers and the classical American pragmatists tend to reject a too-sharp distinction between philosophy and religion and, rather, acknowledge their entanglement within human life.[65] In Jewish thought we find links between jurisprudence and metaphysics or between nomos (halakhah) and narrative (aggadah).[66] In CAP too, the PM functioned as a synthetic (or postanalytic) philosophical perspective. For this reason, pragmatic reasoning applies to both science and ethics, and for this reason legal pragmatism developed as a branch of CAP.[67] In this context, Michal Alberstein coined the term “Phil*aw*sophy,” referring to the pragmatist entanglement between law and philosophy.[68] We should also recall that religion was an essential part of the *Weltanschauung* of the classical American pragmatists, who were (inter alia) philosophers of religion.[69] Pragmatism, in this regard, is a philawsophy of religion. Located in such a way, it is clearer what is the relevance of Jewish tradition, with its law orientedness, to the research of pragmatism and vice versa.

Exploring the appearance of the PM in Jewish tradition starts by recalling some of its alleged pragmatist trajectories. Consider, for example, Michael Fishbane’s assessment that Jewish tradition incorporates “the exegetical voices of many teachers and tradents, from different circles and times, responding to

[65] See, e.g., the observation by Mordecai M. Kaplan: “Our Sages long ago anticipated John Dewey in his emphasis on the pragmatic aspect of all study. The well-known principle enunciated in *Avot* (1:17), ‘Not study, but action is the important thing,’ is expressed in multitude of dicta throughout the Rabbinic literature” (*The Religion of Ethical Nationhood* [New York: Macmillan, 1970], 189).

[66] See Avinoam Rosenak, *A Prophetic Halakhah* [in Hebrew] (Jerusalem: Magnes, 2007), 128ff.; Yair Lorberbaum, *In God’s Image*, trans. M. Prawer, ed. Y. Chipman (New York: Cambridge University Press, 2015), 61–88.

[67] The legal writings of Supreme Court Justices Oliver Wendell Holmes Jr. and Benjamin N. Cardozo are a branch of CAP. See Holmes, “Path of the Law”; Cardozo, *The Nature of the Judicial Process* (New Haven, CT: Yale University Press, 1921). We cannot enter here into the debates within American jurisprudence (e.g., between Richard Posner and Ronald Dworkin) about pragmatism and legal deliberation. On common legal misconceptions of CAP, see Michael Sullivan, *Legal Pragmatism* (Bloomington: Indiana University Press, 2007), 48–78.

[68] Michal Alberstein, *Pragmatism and Law* (Aldershot: Ashgate, 2002), x–xiv, 1–99. The term “Philawsophy” is akin to the concept of “nomocentrism”; see Joseph E. David, *Jurisprudence and Theology in Late Ancient and Medieval Jewish Thought* (Dordrecht: Springer, 2014), 7–10. On pragmatic inclinations in Muslim legal tradition, see Ahmed F. Ibrahim, *Pragmatism in Islamic Law* (Albany, NY: SUNY Press, 2015).

[69] See, e.g., Smith, *Purpose and Thought*, 159–94; Michael R. Slater, *Pragmatism and the Philosophy of Religion* (Cambridge: Cambridge University Press, 2014); Sami Pihlström, *Pragmatic Realism, Religious Truth, and Antitheodicy* (Helsinki: Helsinki University Press, 2020). On ignoring the religious habitat of the classical American pragmatists, see Randy L. Friedman, “Traditions of Pragmatism and the Myth of the Emersonian Democrat,” *Transactions of the C. S. Peirce Society* 43 (2007): 154–84.

real and theoretical considerations as perceived and anticipated."[70] This entanglement of theory and praxis reflects the teleological (or *tachlis*) trajectory in Jewish tradition, which has been noted by various scholars.[71] This purposive temper, which is prevalent in Jewish law, is by no means trivial.[72] The initial connection between purposiveness and the PM is that religiously instructed purposiveness is predicated on the assumption that at least in some postulatic sense the world is divinely created or that there is a divine purposing agent.[73] This purposiveness is, in its turn, entangled with ethics, by the assumption that human moral conduct corresponds, in some ways, to purposive divine wisdom or instruction (it is noteworthy that the Hebrew word *torah* is derived from *hora'ah*, i.e., instruction). The role of purposiveness in Judaism has been recognized by Avi Sagi and Daniel Statman and by many others.[74] Ultimately, the type of pragmatic attunement that is encapsulated in the PM is world inspired and world oriented but not in a strictly naturalistic manner. It does imply, as Emil L. Fackenhein observed, that the teachings of the Hebraic God are considered in the Jewish context as vulnerable to worldly affairs and as potentially validated and falsified by them.[75]

We turn to the question of whether the concept of the PM (as defined above) is found within Jewish tradition. This question is pivotal for appreciating whether RḤH functioned within traditional Judaism or perhaps exceeded it. Can we find a deployment of the PM across the heterogeneous corpus of Jewish intellectual history? The following exploration, which will be divided into the four major eras in Jewish thought—(i) biblical, (ii) talmudic,

[70] Michael Fishbane, *Biblical Interpretation in Ancient Israel* (Oxford: Clarendon, 1985), 543.

[71] See, e.g., Werner Sombart, *The Jews and Modern Capitalism*, trans. M. Epstein (Kitchener: Batoche, 2001), 186. See, however, the critiques of Sombart's broader anti-Jewish bias, as presented by Jerry Z. Muller, *The Mind and the Market: Capitalism in Western Thought* (New York: Anchor, 2002), 252–57.

[72] On this prevalence in Jewish law, cf. Halivni, *Midrash, Mishnah, and Gemara*; and see Chaim N. Saiman, *Halakhah: The Rabbinic Idea of Law* (Princeton, NJ: Princeton University Press, 2018), 42. Consider, e.g., Kierkegaard, "Lily of the Field." Kierkegaard's trajectory in this work, which is a commentary of Matt. 6:24–34, is that ultimately, pragmatic future-oriented attempts are religiously futile.

[73] On the Kantian roots of CAP, see n. 41 above. On the indispensability of natural purposiveness in Aristotle and Darwin, see Lenn E. Goodman, *Creation and Evolution* (London: Routledge, 2010), who highlights the attempt of some post-Darwinian reductionists to "keep the postulates but try to keep them quiet, hooded in their cages" (41).

[74] Avi Sagi and Daniel Statman assert: "the image of God emerging from halakhic sources is hard to reconcile with the one suggested by DCM [divine command morality]. While DCM theories tend to picture God as voluntaristic, commanding particular acts not because they are intrinsically valuable but merely because He wishes them, the image of God found in halakhic sources is that of a rational God acting upon reasons. Since Halakha was traditionally understood as a human extension of a divinely revealed law, it reflects, not surprisingly, the rational and moral character of God" ("Divine Command Morality and Jewish Tradition," *Journal of Religious Ethics* 23, no. 1 [1995]: 39–67, at 61). On the term "Judaism," see n. 6 above.

[75] "Unlike the Christian eschatological expectation, the Jewish is at least in part falsifiable by future history." Emil L. Fackenhein, *Encounters between Judaism and Modern Philosophy* (New York: Schocken, 1973), 20.

(iii) medieval, and (iv) modern—obviously does not imply that pragmatism or the PM is the only attitude one may find in Jewish tradition.

The biblical era.—In the Hebrew Bible, God is generally perceived as a transnatural entity. At the same time, when humans are deliberating about their actions vis-à-vis God, they often practice pragmatic attitudes, examining God considering his (or her: the biblical God seems relational, in Carol Gilligan's terms, in a way that may justify such gender extension) earthly and moral manifestations. The biblical concept of trial (*nissayon*) is telling in this regard. Think of Abraham's trials in the book of Genesis.[76] Instead of interpreting them as harming morality and humans, as Kierkegaard did, one can and perhaps should interpret biblical trial as aiming to merit the tested person.[77] In this manner, Abraham can be read as (i) trying to act rationally (or pragmatically) or as (ii) often failing to act this way.[78] (i) Facing Sarah's infertility, Abraham is willing to migrate to Canaan in order to have offspring; (ii) his willingness to offer his son, Isaac, as a sacrifice (*ollah*) was rejected by God's angel (Gen. 22:12), and given that, the Binding (*aqqedah*) of Isaac can be evaluated as failure rather than accomplishment.[79]

Another relevant biblical phenomenon that is reflective of the PM, and maybe also a precondition to it, is miracles, namely, the divinely instructed deviation of nature from its laws and regularity.[80] The notion that the world may indicate something about God's will is profound for the pragmatist idea of the possible.[81] The possible is located in a strait between complete

[76] According to rabbinic tradition, Abraham was tested ten times; see *Pirqei de-Rabbi Eliezer*, ed. C. M. Horowitz [in Hebrew] (Jerusalem: Makor, 1972), chaps. 26–31, 89–108, and parallels.

[77] Søren Kierkegaard, *"Fear and Trembling" and "The Sickness unto Death"*, trans. W. Lowrie (Princeton, NJ: Princeton University Press, 2013). For a relevant critique, see nn. 144 and 146 below. Deut. 8:16 speaks, in the manner of aiming to merit the tested person, of God, "Who fed thee in the wilderness with manna . . . that He might afflict thee . . . to do thee good at thy latter end." See Jacob Licht, *Testing in the Hebrew Scriptures and in Post-biblical Judaism* [in Hebrew] (Jerusalem: Magnes, 1973), 13–29.

[78] For a philosophical delineation of the Abrahamic ethos, see Lenn E. Goodman, *God of Abraham* (New York: Oxford University Press, 1996), arguing pragmatically that whereas "absolutes" should be mediated with particularities, "only goodness can serve as a foundation" (89).

[79] Recall that infanticide was the norm in ancient Israel (Jer. 7:30–31) and that God's angel had to warn Abraham not to harm Isaac even slightly ("Lay not thy hand upon the lad, neither do thou any thing unto him"; Gen. 22:12). Recall that the noun *meumah* is derived from *moum* (lit. defect; see, e.g., Dan. 1:4). See also Uriel Simon, *Seek Peace and Pursue It* [in Hebrew] (Tel Aviv: Miskal, 2002), 49–55. Interestingly, Omri Boehm's book, *The Binding of Isaac: A Religious Model of Disobedience* (New York: T&T Clark, 2007), does not consider the option that Abraham in fact failed this divine testing. The axiological importance of conscientious objection (which Abraham did practice facing Sodom) does not logically depend on Abraham's success to practice it. See my remark on pragmatic fallibilism vs. hagiography in "Pragmatism and Jewish Thought," 103.

[80] For a pragmatist perspective on miracles, see Azgad Gold, *On Miracles and Nature* [in Hebrew] (Ramat Gan: Bar-Ilan University, 2015), esp. Gold's engagement with William James (21–25, 298–301).

[81] For an articulation of pragmatism as the realm of possible, see John J. McDermott, *The Drama of Possibility: Experience as Philosophy of Culture* (New York: Fordham University Press, 2007).

indeterminacy, or chaos, and determinism or predestination.[82] In the pole of indeterminacy, miracles lose their miraculousness since any regularity is ruled out. In determinism, however, God's sovereignty terminates the possibility for human autonomy.[83] This modality is vital for understanding biblical depictions of how humans perceive God's will. Normative content is often formed and informed in the Hebrew Bible by considering worldly factors. A prominent example of this is Abraham's arguing with God in order to annul the collective mortal verdict of the Sodomites (Genesis 18–19).[84] Abraham believed that his moral protest reflects God's inherent character, not merely his own subjective conviction.

Another example for an application of the PM is Aaron after the tragic death of his two sons, Nadav and Abihu (Lev. 10:1–3). Aaron implicitly interprets God's commandment, namely, the instruction to eat from the sacrifice, in light of Aaron's intuitive moral reasoning.[85] The fact that the narrative views this intuition favorably testifies that Aaron's intuition is not merely subjective but accords with God's will (similar to the moral intuition of the daughters of Ẓelopheḥad).[86] Another example for an implicit biblical application of the PM is Moses's conversation with God after the sin of the spies.[87] Moses assumed that God's intentions are appropriated by humans, on the local and universal level, according to God's actions.[88] Another biblical example for such application of the PM is King David, who decides to bring the Holy Ark into the city of Zion only after he acknowledged the wealth that the presence of the Ark bestowed on Edom the Gittite (2 Sam. 6:9–12). David's pious hedonism

[82] The neighboring concepts of chaos are absurd and nihilism. For a claim concerning a reemergence of ancient gnostic themes in modern Existentialism, see Jonas, *Gnostic Religion*, 320–40. On this inclination in the Kalam and in John Calvin, see Harry A. Wolfson, *The Philosophy of the Kalam* (Cambridge, MA: Harvard University Press, 1976), 601–12; Ernst Troeltsch, *The Social Teaching of the Christian Churches*, vol. 2, trans. O. Wyon (New York: Harper & Row, 1960), 579–86.

[83] Both extremes (determinacy and indeterminacy) nullify, in different ways, the possibility for pragmatic human attunement, which requires a degree of ontological fallibilism or freedom. Hence, James's notion of "meliorism" (*Pragmatism*, 179–86), which mediates between deterministic pessimism that renders salvation impossible and deterministic optimism that deems human agency obsolete.

[84] Another example is Moses and Aaron, who protested God's collective punishment of Koraḥ and his congregation (Num. 16:22). See Dov Weiss, *Pious Irreverence: Confronting God in Rabbinic Judaism* (Philadelphia: University of Pennsylvania Press, 2017), 235.

[85] "If I had eaten the sin offering today, would it have been well pleasing in the sight of the Lord?" (Lev. 10:19). Despite Moses's inclination toward a plain sense understanding of God's instruction, he too finds Aaron's reasoning valid (Lev. 10:20). See Fishbane, *Biblical Interpretation*, 226.

[86] For a claim that God's law is directed toward the good, see John E. Hare, *God's Command* (New York: Oxford University Press, 2015), 32–62.

[87] "Now if Thou shalt kill this people . . . the nations . . . will speak, saying: Because the Lord was not able to bring this people into the land . . . He hath slain them in the wilderness" (Num. 14: 15–16).

[88] On the halakhic vitality of how God's actions are perceived by external observers, see Aviad Hacohen, "'Wherefore Should the Nations Say?' Israel's Image in the Eyes of the Nations as a Consideration in Halakhic Ruling in Jewish Law" [in Hebrew], in *Am le-Vadad: Moledet uPezurah*, ed. B. Lau (Tel-Aviv: Miskal, 2006), 88–123.

adheres to the pragmatic moral agenda of the grand speeches in the Pentateuch (Lev. 26:3–44; Deut. 7:12–24 and 28), which esteems prosperity and flourishing over destruction and chaos.

The above biblical examples, which manifest a pragmatic attitude of monitoring both the divine and human religious character according to observable worldly manifestations and the value of goodness, are found also in the biblical wisdom literature (i.e., the books of Psalms, Job, Proverbs, and Ecclesiastes). A profound expression of the PM is found in the seemingly counterfactual words of the Psalmist (85:12): "Truth springeth out of the earth."[89] The idea of the earthly as indicative in some sense of the divine obviously generates the problem of theodicy, for suffering presumably indicates divine resentment (as in Gen. 12:17).[90] In a protopragmatist manner, it is often conveyed within the biblical wisdom literature that divine metaphysics (including theodicy) is beyond human reach, yet earthly morality is the way of knowing God.[91]

The talmudic era.—Within early rabbinic texts, we find a more sophisticated expression of the PM.[92] The Sages (or at least the majority of them) made ethical interpretive choices regarding Mosaic law, at times suspending or even uprooting it.[93] As David Brezis has argued, pragmatic inclinations are more apparent within the rabbinic school of the Hillelites, in their initial positive attitude toward this world (as opposed to the Shammaic stance that tends to pessimism), toward corporeality, and toward sociality.[94]

[89] See the midrashic commentaries of this myth in *Genesis Rabbah* sec. 8. On its Persian context, see Alexander Kohut, "Parsic and Jewish Legends of the First Man," *Jewish Quarterly Review* 3, no. 2 (1891): 231–50, at 244.

[90] The problem of theodicy exceeds the focus of this article. It seems reasonable, though, to speculate that pragmatist approaches tend toward agnosticism and refrain from accusing specific individuals for their suffering. For a discussion of how pragmatism helps in articulating modest theodicies, see Pihlström, *Pragmatic Realism.*

[91] As in Prov. 1:7 ("The fear of the Lord is the beginning of knowledge") and Job 28:28 ("the fear of the Lord, that is wisdom"). See John Barton, "Ethics in the Wisdom Literature of the Old Testament," in *Perspectives on Israelite Wisdom,* ed. J. Jarick (London: Bloomsbury, 2016), 24–37.

[92] Even though Philo of Alexandria and the Judaean Desert scrolls are not considered here, they deserve attention in the context of pragmatism and the PM. In a nutshell, whereas in the Judaean Desert sect there is a very limited trust in human exegesis, Philo believed in human rationality and consequently saw the commandments as rationally comprehensible. On the singularity of talmudic discourse vis-à-vis the ethos of the Judaean Desert sect, see, e.g., Moshe Halbertal, *The Birth of Doubt: Confronting Uncertainty in Early Rabbinic Literature* (Providence, RI: Brown University Press, 2020), e.g., 13–14.

[93] See Adiel Schremer, "Between Radical Interpretation and Explicit Rejection" [in Hebrew], in *Renewing Jewish Commitment: The Work and Thought of David Hartman,* vol. 2, ed. A. Sagi and Z. Zohar (Jerusalem: Hartman, 2001), 747–69. The talmudic sages, or *ḤaZaL* (the Hebrew abbreviation for *Ḥakhameinu Zikhram liBhrakhah,* our sages of blessed memory), are denoted henceforth as Sages, as distinct from "sages," which denotes post-talmudic Jewish rabbis as well.

[94] A famous example is the pessimistic dispute between the Shammaites and the Hillelites on whether it is better for a human being to be born or not (Babylonian Talmud [hereafter BT], tractate *Eruvin* 13b). For a claim that this dispute is exceptional in the Talmud, see Ephraim E. Urbach, *The Sages: Their Concepts and Beliefs,* trans. I. Abrahams (Jerusalem: Magnes, 1975), 250–54. See David Brezis, *Between Zealotry and Grace* [in Hebrew] (Ramat Gan: Bar-Ilan University Press, 2015), 11–388. Brezis does not engage with CAP as a philosophical school, yet he frequently uses the term "pragmatism" and its declensions.

The interest in the ramifications of theories, rather than their presumed independent essence, is reflected across the talmudic literature. The expressions "What difference does it make?" (*lemai nafqa minah*) and "What's between the two [legal] cases?" (*mai benai'hu*), reflect the Sages' tendency to distinguish between disputing halakhic conceptions according to the practical normative differences they make or might create in the visible normative world. In this manner, the talmudic *oqqimta* (contextualizing the case under consideration) is a means for revealing the theoretical differences between theories by illuminating their practical ramifications.[95] This tendency is typical of the talmudic emphasis on outcomes and on the independent standing of the sage.[96]

In the aggadic context, the talmudic consideration of concepts by their worldly and ethical bearings is illuminated by Warren Zev Harvey, who claims that the Sages' opinions about philosophical questions (e.g., around cosmogony) were determined by their ethical ramifications.[97] Another example of pragmatic reasoning is found in the *mekhilta*, which describes the Israelites who perceived the miracle of the crossing of the Sea of Reeds as reaffirming God's mercy on them.[98]

This purposiveness and reason ladenness is contrasted with absurdity, with the vain (or *tohu*, as in Gen. 1:2). The purposive talmudic outlook is expressed in the *tiqqun 'olam* (world repair) laws in Mishnah *Gittin* 4:2–5:9 (see esp. 4:5), which imply that God's creation is not in vain ("He created it not in vain, [but] to be inhabited"; Isa. 45:18) and that humans are correspondingly called to channel their actions in constructive routes.[99] In this regard, the allegation by Sages that certain interlocutors are "fools" merits attention.[100]

[95] This paragraph is indebted to Azgad Gold's lecture "A Reading of Halakhic Literature in the Spirit of Pragmatism: An Analysis of the Concepts of Miracle and the Plea Prayer" [in Hebrew], delivered at the 17th World Congress of Jewish Studies, Jerusalem (August 7, 2017).

[96] See correspondingly Adiel Schremer, *Ma'ase Rav: Halakhic Decision-Making and the Shaping of Jewish Identity* [in Hebrew] (Ramat Gan: Bar-Ilan University, 2019); Menachem Fisch, *Covenant of Confrontation: A Study of Non-submissive Religiosity in Rabbinic Literature* [in Hebrew] (Ramat Gan: Bar-Ilan University, 2019).

[97] See Warren Zev Harvey, "Rabbinic Attitudes toward Philosophy," in *Essays on Aggadah and Judaica Presented to Rabbi William G. Braude*, ed. H. J. Blumberg et al. (Hoboken, NJ: Ktav, 1992), 83–101, esp. 95. On the primacy of the ethical in the Talmud, see Hayes, *What's Divine*, 287–327.

[98] *Mekhilta deRabbi Ishm'ael*, ed. J. Z. Lauterbach (1933) and David Stern (Philadelphia: Jewish Publication Society, 2004), tractate *baḤodesh*, chap. 5 (313–15); see also Urbach, *Sages*, 316–17. I thank Cass Fisher for referring me to this daring midrash. For a consideration of the pragmatist current that he terms as "Jewish Theological Practice," see Cass Fisher, *Contemplative Nation: A Philosophical Account of Jewish Theological Language* (Stanford, CA: Stanford University Press, 2012), 101–52. Despite the triumphalist scent of this midrash, it does not celebrate victory itself and is thus sensitive to the loss of human life: "My creatures are drowning at sea, and you say songs?" (BT *Megillah* 10b).

[99] Of the vast literature on this formative text, see, e.g., Sagit Mor, "Tiqqun Olam (Repairing the World) in the Mishnah: From Populating the World to Building a Community," *Journal of Jewish Studies* 62 (2011): 284–310.

[100] Michal Bar-Asher Siegal, *Jewish-Christian Dialogues on Scripture in Late Antiquity* (New York: Cambridge University Press, 2019), 43–65.

Michal Bar-Asher Siegal justly points out Tertullian's admiration of divine foolishness as relevant for these rabbinic allusions, but she restricts the argument to misunderstandings of scripture.[101] It can perhaps be suggested that the Sages principally rejected the association of divinity with foolishness. The immediate implication is that within talmudic and post-talmudic culture, worldly flourishing rather than mere suffering and humiliation is the main criterion for appreciating sacred content.[102]

The medieval era.—In medieval Jewish thought, the hermeneutic sensitivity underlying the PM is discernible. Rabbi Judah Halevi, for instance, argued that certain beliefs should be held on the basis of their mental, social, and religious implications, for example, the belief that there is a divine presence in holy places.[103] An additional pragmatic aspect in Halevi's thought is his emphasis on religious experience, as opposed to strict rational perception.[104] Another prominent medieval Jewish thinker in whose writings the PM can be found is Maimonides. First, he used the PM to determine between otherwise rationally equal beliefs, by considering their expected influence on religious life and ethical motivation.[105] Second, he claimed that some beliefs are beneficial because of their contribution to human flourishing and not necessarily because of their a priori rational justification.[106] Third, Maimonides argued that one of the proofs for the divinity of the Pentateuch (Torah) is the benefit gained by practicing its laws.[107] In that, Maimonides shared much with numerous Jewish scholars who thought that there are, in most cases, reasons for the

[101] See Bar-Asher Siegal, *Jewish-Christian Dialogues*, 63–64; and *Tertullian's Treatise on the Incarnation*, trans. E. Evans (London: SPCK, 1956), 19: "The Son of God died; it is immediately credible, because it is silly." Tertullian's affiliation with Montanism and its radical spirituality (which was denounced by proto-Orthodox Christianity as heresy) is contrasted with the worldliness of thinkers such as Julian of Eclanum, Thomas Aquinas, and the classical American pragmatists.

[102] Even authors such as Judah Halevi, who grappled with accounting for the despised condition of Jews, did not abandon the initial priority of flourishing over abjection. See Daniel J. Lasker, "Proselyte Judaism, Christianity, and Islam in the Thought of Judah Halevi," *Jewish Quarterly Review* 81, nos. 1–2 (1990): 75–91.

[103] See Judah Halevi, *The Kuzari*, trans. H. Hirschfeld (New York: Schocken, 1971), 2:56, 4:3–4. On the mutual dependency of the holy and the mundane, see Mircea Eliade, *The Sacred and the Profane: The Nature of Religion*, trans. W. R. Trask (New York: Harcourt Brace, 1959), 30. On Halevi as expressing a kind of protopragmatism, see Wolfson, "Maimonides and Halevi."

[104] See Halevi, *Kuzari*, 3:5; According to Goodman, *King's Dream*, 227, Halevi is not a straightforward pragmatist, yet he expresses significant pragmatic intuitions. This pragmatism, it seems, is akin to Halevi's alleged empiricism (Goodman, *King's Dream*, 46–51).

[105] Moses Maimonides, *Guide of the Perplexed*, trans. S. Pines, 3 vols. (Chicago: University of Chicago Press, 1963), 2:25. See Menachem Kellner, *Maimonides on Human Perfection* (Atlanta: Scholars, 1990), chaps. 2 and 4 (7–11, 41–45).

[106] Maimonides, *Guide*, 3:28.

[107] In Maimonides's view, the two main purposes of the Torah, which prove its divine origin and demonstrate its "great benefits," are the perfection (or perfecting) of the body (individual, social) and the perfecting of the soul (philosophical and theological knowledge). See Maimonides, *Guide*, 3:27 (pp. 510–12); see also 2:40, 3:31 (341–85, 523–24); and Moshe Halbertal, *Maimonides: Life and Thought*, trans. J. Linsider (Princeton, NJ: Princeton University Press, 2014), 328–29.

commandments.[108] Among those who apply the PM, we may include later Jewish medievalists such as Naḥmanides, the Zoharic circle, and Rabbis Levi ben Gershom, Ḥasdai Crescas, and Menaḥem ha-Me'iri.[109]

The modern era.—In postmedieval Jewish thought there are manifestations of the PM in various contexts. With the rise of European Enlightenment, the question of whether rationality should take ethical ramifications into consideration became central. At the same time, the legitimacy of considering authoritative rulings on a moral basis, which is at the core of the PM, was deeply challenged with the formation of the sovereign state and its massive coercive power (see Fromm's remark in n. 56 above).[110] An important landmark in the application of the PM in the modern era is Moses Mendelssohn, who asserted (in his dispute with Immanuel Kant) that freedom of thought and expression must consider societal ramifications.[111] At the same time,

[108] See Isaac Heinemann, *The Reasons for the Commandments in Jewish Thought*, trans. L. Levin (Brighton, MA: Academic Studies, 2008). On the reasons for the commandments in Kabbalah, see, e.g., Moshe Hallamish, *An Introduction to the Kabbalah*, trans. R. Bar-Ilan and O. Wiskind-Elper (Albany, NY: SUNY Press, 1999), 207–46.

[109] See, e.g., Naḥmanides's commentary on Deut. 6:18 (and on Lev. 19:2), which emphasizes the duty to do "the righteous and the good," which implies the interpretation of divine instruction considering the idea of moral good. See also Moshe Halbertal, *Naḥmanides: Law and Mysticism*, trans. D. Tabak (New Haven, CT: Yale University Press, 2020), 269–85. See the commentary of the Zohar (1:103b) on Prov. 31:23, "Her husband is known in the gates" (nod'a bashe'arim ba'alah), indicating that God (*ba'alah*) is known (*nod'a*) by the modes in which divinity becomes known by the speculative and imaginative faculties of humans. See *The Zohar*, vol. 2, trans. and commentary Daniel C. Matt (Stanford, CA: Stanford University Press, 2004), on *Parashat Va-Yera*, 133, and n. 127. See also Yehuda Liebes, "Zohar and Eros" [in Hebrew], *Alpa'im* 9 (1994): 67–119, esp. 73–76. Pragmatist mystical approaches typically adhere to the notion of God as caring (as different from gnostic belief in a hostile God). See Moshe Idel, "'Ganz Andere': On Rudolph Otto and Concepts of Holiness in Jewish Mysticism," *Da'at: A Journal of Jewish Philosophy and Kabbalah* 57/59 (2006): v–xliv. Levi ben Gershom is known as Gersonides, or RaLBaG. His utilitarian approach is reflected in his Bible commentary and its major theme of *to'alot* (utilities). See Nima Hirschensohn Adlerblum (RḤH's daughter), *A Study of Gersonides in His Proper Perspective* (New York: Columbia University Press, 1926), 24–54; and Alexander Green, *The Virtue Ethics of Levi Gersonides* (London: Palgrave Macmillan, 2016), 19–62. See Ḥasdai Crescas, *Orr Hashem* [in Hebrew] (Jerusalem: Makor, 1984), 2:6, 1; and correspondingly Warren Zev Harvey, *Rabbi Ḥasdai Crescas* [in Hebrew] (Jerusalem: Zalman Shazar, 2010), 111–14, and "Wolfson's Pragmatic Crescas," *Journal of Textual Reasoning* 13, no. 1 (2022), https://jtr.shanti.virginia.edu/vol-13-no-1-jan-2022/wolfsons-pragmatic-crescas/. See Menaḥem ha-Me'iri, *Commentary Beit ha-Beḥirah on the Talmudic Treatise Bava Kamma*, ed. K. Schlesinger [in Hebrew] (Jerusalem: n.p., 1963), 330–32; and Moshe Halbertal, "'Ones Possessed of Religion': Religious Tolerance in the Teachings of the Me'iri," *Edah Journal* 1, no. 1 (2000): 1–24.

[110] On this issue Spinoza plays a problematic role, as he subjected piety to authority, when contending that "religion, whether revealed by the natural light or by prophetic light, receives the force of commandment solely from the decree of those who have authority to govern" (Benedict de Spinoza, *Theological-Political Treatise*, ed. J. Israel, trans. M. Silverthorne and J. Israel [Cambridge: Cambridge University Press, 2007], 241). See the illuminating discussion by Warren Zev Harvey, "Spinoza vs. the Prophets on the Question of the Criticism of Government" [in Hebrew], *Kivvunim* 12 (1981): 83–90.

[111] Moses Mendelssohn, "On the Question: What Is Enlightenment?," in *What Is Enlightenment?*, trans. J. Schmidt (Los Angeles: University of California Press, 1996), 53–57, esp. 55–56. Compare Shmuel Feiner, *The Jewish Enlightenment*, trans. C. Naor (Philadelphia: University of Pennsylvania

Naphtali Herẓ-Ulman contended that philosophical propositions should be judged by their "explanatory power and practical utility, and not because its truthfulness could be proved in full certainty."[112] Herẓ-Ulman's pragmatism, to be sure, preceded that of the classical American pragmatists, and yet "Ulman's and James's conceptions grow on a common ground—skepticism concerning reason's capacity to reach a determination in philosophical disputes on the one hand, and a utilitarian-practical approach to empirical science on the other."[113] For this reason, worldly (rather than metaphysical) ramifications gain more weight.

Within the halakhic context, Avinoam Rosenak identified an expression of the "pragmatist truth-test" in the writings of Rabbi Aryeh Leib HaCohen, author of *Keẓot HaḤoshen*, and in Rabbi Moshe Feinstein, who shared with many other halakhists the premise that halakhic truth is predominantly determined bottom-up.[114] The following thinkers can also be noted as applying the PM: Rabbis Naḥman of Breslav, Abraham Geiger, Samson Raphael Hirsch, Isaac Meyer Wise, and Shmuel David Luzzatto (ShaDal); the early Zionist thinkers (secular and religious); Rabbi Eliyahu Eliezer Dessler; Franz Rosenzweig; Martin Buber; and Rabbis Ḥayyim David HaLevi, Max Kadushin, Ovadiah Yosef, Joseph B. Soloveitchik, and David Hartman.[115]

Press, 2011), 5. See Gideon Freudenthal, *No Religion without Idolatry: Mendelssohn's Jewish Enlightenment* (Notre Dame, IN: Notre Dame University Press, 2012), stating that according to Mendelssohn, "Negative implications for the well-being of human society serve as an indication of the falsity of the metaphysics of which they are the consequences" (52).

[112] Alexander Even-Chen, "Enlightenment, Pragmatism, and Faith: The Philosophical System of Naphtali Herẓ Ulman" [in Hebrew] (PhD diss., Hebrew University, 1992), 14, referring to Herẓ-Ulman's book *Ḥokhmat HaShorashim* [Wisdom of the roots/principles] (Hague, 1781), 3:2.

[113] Even-Chen, "Enlightenment, Pragmatism, and Faith," 17. On Herẓ-Ulman, see also David B. Ruderman, "The Hague Dialogues," *Studia Rosenthaliana* 44 (2012): 221–39.

[114] Rosenak, "Truth Tests," 166–67; cf. the above discussion (ca. n. 89) on "Truth springeth out of the earth."

[115] Naḥman of Breslav, *Likkutei Moharan* [in Hebrew] (Jerusalem: n.p., 1965), sec. 65:4, speaks about the wisdom (*sekhel*) that bears fruits and the "sign" (*simman*) as a pragmatic criterion. See Abraham Geiger, "A General Introduction to the Science of Judaism," in *Abraham Geiger and Liberal Judaism*, trans. E. J. Schlochauer (Philadelphia: Jewish Publication Society, 1962), 149–57. See Samson Raphael Hirsch, *Judaism Eternal: Selected Essays from the Writings of Rabbi Samson Raphael Hirsch*, ed. and trans. I. Grunfeld (London: Soncino, 1959), 245–52. On Isaac Meyer Wise, see Michael A. Meyer, *Response to Modernity: A History of the Reform Movement in Judaism* (Detroit: Wayne State University, 1995), 228–63. According to Nathan Rotenstreich, *Jewish Thought in Modernity* [in Hebrew], vol. 2 (Tel-Aviv: Am Oved, 1987), 33–34, Shmuel David Luzzatto was an implicit pragmatist, in appreciating how the metaphysical serves the ethical. On secular early Zionist thinkers and Perez Smolenskin's advocacy of religious practice where it promotes the social good, see Ehud Luz, *Parallels Meet*, trans. L. J. Schramm (Philadelphia: Jewish Publication Society, 1988), 21ff. Religious early Zionist thinkers include rabbis Yeḥiel M. Pines and Shmuel Mohilever and the ideologists of the Religious Kibbuẓ (*haqibbuẓ hadati*) movement, e.g., Moshe Unna. See Michael Ben-Admon, *Rebellion and Creativity in Religious Zionist Thought* [in Hebrew] (Ramat Gan: Bar-Ilan University, 2013), 223–54. Eliyahu Eliezer Dessler wrote in his *A Letter from Eliyahu* against the idea of absolute truth and, rather, praised the practical moral truth. See Marc B. Shapiro, *Changing the Immutable*

The following statement, by Rabbi Avraham Yiẓḥak haCohen Kook, is a profound expression of the PM (and more specifically, negative pragmatism) within Jewish tradition: "Piety [*yirat shamayim*] must never harm the natural morality of humans, because it is then no more a pure piety. An indication of a pure piety is when a natural morality, rooted in the straight nature [*batave ha-yashar*] of humans, develops more [when nourished by such piety] than it would otherwise. However, if there could be such a piety that without its influence, life would run its course better . . . when this piety diminishes this power, such a piety is improper."[116]

The above section outlined, in an introductory manner, the appearance of the application of the PM in Jewish thought, namely, the apprehension of divinity and religious matters according to their earthly manifestations. Once again, it did not claim that PM or pragmatism more broadly is the only or the most prominent voice within Jewish tradition. Equipped with a schematic picture of the footprints of PM in Jewish thought, we turn to investigate a specific case study.

III. THE APPLICATION OF THE PRAGMATIC MAXIM IN HIRSCHENSOHN'S WRITINGS

In this section I give a brief overview of Hirschensohn's intellectual biography and its intersections with CAP and then elaborate on the applications of the PM in RḤH's writings.

(Portland, OR: Littman, 2014), 284. See Franz Rosenzweig, *Understanding the Sick and the Healthy*, trans. N. Glatzer (New York: Noonday, 1954), which considers the vitality of ideas according to their impact (positive or negative) on human life. Not surprisingly, this work by Rosenzweig appealed to Hilary Putnam; see his introduction to the 1999 Harvard edition of the book, at 1–21. Martin Buber emphasized, e.g., in his *Between Man and Man* (London: Paul, 1947), that ideas are measured by their worldly ethical bearings. See also Paul Pfuetze, "Martin Buber and American Pragmatism," in *The Philosophy of Martin Buber*, ed. P. A. Schlipp and M. Friedman (La Salle, IL: Open Court, 1967), 511–42; and Asaf Ziderman, "Martin Buber's Dialogical Thought as a Philosophy of Action," *Journal of Religion* 101, no. 3 (2021): 371–87, esp. 386–87. On Ḥayyim David HaLevi's pragmatist legacy, see Moshe Hellinger, "Judaism and Democracy in Rabbi Ḥayyim David Halevi's Thought" [in Hebrew], in *A Living Judaism: Essays on the Halakhic Thought of R. Ḥayyim David Halevi*, ed. Z. Zohar and A. Sagi (Jerusalem: Hartman, 2007), 87–128. See Max Kadushin, *Organic Thinking: A Study in Rabbinic Thought* (New York: Jewish Theological Seminary of America, 1968), vi–vii, 68–79; and Peter Ochs, "Max Kadushin as Rabbinic Pragmatist," in *Understanding the Rabbinic Mind*, ed. P. Ochs (Atlanta: Scholars, 1990), 165–96. On Ovadiah Yosef's pragmatic inclination, see Ariel Picard, *The Philosophy of Rabbi Ovadia Yosef in an Age of Transition* [in Hebrew] (Ramat Gan: Bar-Ilan University, 2007), 87–114. Joseph B. Soloveitchik wrote: "Regardless of the shortcomings of pragmatism as a solution to our most perplexing epistemological problems, it is nevertheless advisable to apply, at times, the pragmatic principle to the appraisal of certain philosophical theories" (*The Halakhic Mind: An Essay on Jewish Tradition and Modern Thought* [New York: Free Press, 1986], 52). For a pragmatist interpretation of Maimonides by David Hartman, see his *Maimonides: Torah and Philosophic Quest* (Philadelphia: Jewish Publication Society, 1976), 192.

[116] Avraham Yiẓḥak haCohen Kook, *Lights of Holiness* [in Hebrew], vol. 3, ed. D. haCohen (Jerusalem: Mosad haRav Kook, 1994), 27. On Kook's implicit connections to pragmatism,

A. Hirschensohn vis-à-vis Classical American Pragmatism

Ḥayyim Hirschensohn was born in the town of Safed in 1857 to Sarah and Rabbi Ya‘akov Hirschensohn, a Lithuanian family that was nevertheless affiliated with the Sephardi congregation in the land of Israel (then dominated by the Ottoman empire).[117] The Sephardi halakhic tradition tended toward a pragmatic instruction (which is often lenient but is not necessarily so).[118] The contribution of the current article is in examining this pragmaticism more thoroughly in conjunction with CAP and more specifically the PM.

Hirschensohn relocated with his family to Jerusalem, in 1874 he married Ḥava Cohen-Kareliẓ, and they had five children. Facing an ultraorthodox ban against RḤH, because of his open-mindedness in establishing the *HaMisderonah*, a Wissenschaft des Judentums (*Ḥokhmat Yisrael*, or Jewish Studies) journal, his family migrated to Istanbul.[119] RḤH later moved to Hoboken, New Jersey, where he spent the last three decades of his life serving as a communal rabbi and writing pioneering works on Jewish law and the Hebrew Bible.[120] RḤH addressed various emerging challenges of modernity, wrote on philosophic issues, and grappled with political problems created by the developing Jewish *yishuv* in British Mandate Palestine, questions of Bible criticism, and more.[121] In all these issues, RḤH emphasized

see Benjamin Ish-Shalom, *Rav Avraham Itzhak Hacohen Kook: Between Rationalism and Mysticism* (Albany, NY: SUNY Press, 1993), 178.

[117] See RḤH, *Malki baQodesh* (see n. 121 below), 1:128; and Arie Morgenstern, “Hirschensohn Family and the Rise of Enlightenment and Modernism in Jerusalem” [in Hebrew], *Cathedra* 108 (2003): 105–30, at 124; David Zohar, *Jewish Commitment in a Modern World: R. Ḥayyim Hirschensohn and His Attitude towards Modernity* [in Hebrew] (Ramat Gan: Bar-Ilan University, 2003), 79–80. RḤH’s daughter, Tamarah, later married rabbi David De Sola-Pool of Manhattan’s Portuguese congregation.

[118] See, e.g., Zvi Zohar, “Teleological Decision-Making in Halakhah: Empirical Examples and General Principles,” in *“Wisdom and Understanding”: Studies in Honor of Bernard S. Jackson*, ed. L. Moscovitz et al. (Liverpool: Jewish Law Association Studies, 2012), 331–62, and *Rabbinic Creativity in the Modern Middle East* (London: Bloomsbury, 2013), esp. 355–70. In this vein, Tamar Ross has written that Sephardi rabbis such as B. Ẓ. Meir Ḥai Uziel and Ḥ. D. Halevi tended toward pragmatism. See Tamar Ross, “Modern Orthodoxy and the Challenge of Feminism,” *Studies in Contemporary Jewry* 16 (2000): 3–39, at 28.

[119] *Misderon* means “corridor” in Hebrew; *haMisderonah* (as in Judg. 3:23) means “toward the corridor.” This journal appeared in 1885–88, and its contributors included leading authors such as R. Azriel Hildesheimer, R. David Zvi (RaDaẒ) Hoffman, and RḤH himself.

[120] Regarding Jewish law, see RḤH’s *Sefer Berrurei haMidot* [in Hebrew; lit. book of hermeneutic standards], vol. 1 (Jerusalem: Werker, 1929), vols. 2–4 (Jerusalem: Werker, 1930–31). Regarding the Hebrew Bible, see RḤH’s *Sefer Yamim miQedem* [in Hebrew; lit. ancient years] (Jerusalem: Ẓuqerman, 1908).

[121] On modernity, see RḤH’s renowned responsa series *Sefer Malki baQodesh* [in Hebrew; lit. my king in holiness], vol. 1, ed. D. Zohar (Jerusalem: Hartman, 2007), vol. 2, ed. D. Zohar (Jerusalem: Hartman, 2013), vols. 3–4 (St. Louis: Moinster, 1923), vols. 5–6 (Bucharest: Wieder, 1928). On philosophical issues, see RḤH’s *Mussage’i Shav ve-haEmet* [in Hebrew; lit. false concepts and the truth] (Jerusalem: Ha‘Ivri, 1932). On biblical criticism, see RḤH, *Malki baQodesh*, 2:446–509; Eliezer Schweid, *Democracy and Halakhah*, trans. A. Hadary (Lanham, MD: University Press of America, 1994), 7; Zohar, *Jewish Commitment*, 261–93.

the idea of covenant, which is based on a dialogical "give and take" (*shaqla ve-taria*, in talmudic jargon) between humans and with God.[122] In Alan L. Mittleman's words, "the idea of covenant was born in the world of the ancient Near Eastern city-state in the second millennium before the common era" and is "a way of organizing the relationship between central conceptual features of political life: consent, authority, sovereignty, obligation, freedom, and justice."[123] Similar to the Hebraic covenantal ethos and to the classical American pragmatists, RḤH's conception of truth was fallibilistic.[124] Despite his relative marginality in his own time, his opinions became common within contemporary modern Orthodox Judaism.[125]

Since RḤH's attention was oriented toward reviving the project of Jewish nationhood in the land of Israel, and since he wrote his books in Hebrew, his heritage seemed remote for much of the Jewish American audience.[126] On the other side of the ocean, the fact that RḤH resided in the United States brought many of his Israeli contemporaries to disregard his novel synthesis of Judaism and democracy.[127] RḤH's significance for twentieth-century Judaism is nevertheless acknowledged. At the same time, RḤH's relation to CAP and to the classical American pragmatists has not yet been analyzed systematically, considering the above three core concepts of CAP.

[122] See RḤH's *Elleh Divrei haBrit* [in Hebrew; lit. these are the issues of the covenant], vols. 1–3 (Jerusalem: Ha'Ivri, 1926–28). On the footprints of RḤH's covenant theology in later twentieth-century Jewish thought, see Moshe Hellinger, "The Model of Jewish Democracy versus Democratic Judaism in Modern-Zionist Orthodox Thought of the 20th Century" [in Hebrew] (PhD diss., Bar-Ilan University, 2002), esp. 219–310. See also the illuminating articles included in the volume *Jewish Political Tradition Throughout the Ages: In Memory of Daniel J. Elazar*, ed. M. Hellinger [in Hebrew] (Ramat Gan: Bar-Ilan University, 2010).

[123] Alan L. Mittleman, *The Scepter Shall Not Depart from Judah: Perspectives on the Persistence of the Political in Judaism* (Lanham, MD: Lexington, 2000), 48–49.

[124] In RḤH's editorial introduction to the first issue of *HaMisderonah* (1885–87) he makes clear (p. v) that choosing this title (*to* the corridor, rather than "at the main hall") implies that he was not presuming to write down *the* ultimate and absolute truths but rather to deepen the intellectual quest. On pragmatic fallibilism see above (ca. n. 13).

[125] See, e.g., RḤH's open-minded approach to the analytic study of the Bible and his profound place in the compilation by Yoshi Fargeon, "Annotated Anthology: 'Wisdom and Knowledge Will Be Given to You,'" in *The Believer and the Modern Study of the Bible*, ed. T. Ganzel, Y. Brandes, and C. Deutsch, trans. A. Staiman et al. (Boston: Academic Studies Press, 2019), 1–190; see also n. 137 below.

[126] On the nontriviality of maintaining a Zionist approach facing the traditional "Three Oaths" (in BT *Ketubot* 110b–111a, interpreting *Song of Songs* 2:7, 3:5, 5:8), which seemingly prohibit Zionist activism altogether, see David Ellenson, "Rabbi Haim Hirschensohn: An Orthodox Rabbi Responds to the Balfour Declaration," *American Jewish History* 101, no. 3 (2017): 247–69, at 254–62, and comprehensively in Aviezer Ravitzky, *Messianism, Zionism, and Jewish Religious Radicalism*, trans. M. Swirsky and J. Chipman (Chicago: University of Chicago Press, 1996).

[127] Such synthesis is presently found, e.g., in Yehuda Brandes, "Modern Halakhic Rulings and the Sovereign State" [in Hebrew], in *Jewish Law and Zionism*, ed. Y. Z. Stern and Y. Sheleg (Jerusalem: Israel Democracy Institute, 2017), 17–44.

The justification for comparing RḤH with CAP is based on his proclamations with regard to philosophy in general,[128] and to pragmatism in particular, from which we learn about RḤH's acquaintance and affiliation with CAP and the classical American pragmatists, and his appreciation of their philosophical vitality: "The reason for my decision to collect my articles in this book . . . was my learned daughter Mrs. Dr. Neḥama [Nima] Adlerblum . . . who studied philosophy with Professor [John] Dewey and Prof. [Frederick J. E.] Woodbridge at Columbia University, and she was drinking from the fountain of the pragmatist philosophy in the books of professor [William] James. She [Nima] thus asked me to assemble the "aspect of vitality" [*ẓad haḥayyim*] of religious Hebrew philosophy."[129] In fact, the transmission of knowledge was bidirectional: Nima Hirschensohn Adlerblum, who was a close student of John Dewey, described the impression her father had on Dewey: "Esther [Nima's sister] and I [Nima] would usually share with *avi* [literally, my father, RḤH] [the content of] our courses in philosophy and deliver his remarks to our professors. To their surprise, he sometimes discovered flaws in their thinking, of which they had not been aware. John Dewey was interested in reading my father's manuscript on education, which I had translated [for Dewey]."[130]

As Eliezer Schweid has noted, there is a shift in RḤH's intellectual biography from spiritualist and kabbalist tendencies to a more pragmatist ones, parallel to his emigration from Israel and Turkey to the United States.[131] Facing various conflicts between religion and modernity, the mode of thinking that RḤH found in pragmatism reinforced his attempt to maintain "Religion, Torah, and life together."[132] Schweid examined various contexts of RḤH's thought and commented on his affinity to pragmatism.[133] RḤH's thought was studied also by David Zohar, who wrote a comprehensive monograph on him and edited (with illuminating comments) some of his *Malki*

[128] Paraphrasing a common medieval aphorism, RḤH's writes: "I love Aristotle, I love Plato, I love all the sages of Israel and of the nations, and above all truth and the true God shall guide us in the true path. Amen" (*Yamim miQedem*, 246). Schweid traces the origin of RḤH's acquaintance with philosophy: during his time in Istanbul, he audited lectures on Spinoza, which stimulated his intellectual curiosity. See Eliezer Schweid, *A History of Modern Jewish Religious Philosophy: Part IV* [in Hebrew] (Tel-Aviv: Am Oved, 2006), 109–23, esp. 111.

[129] RḤH, introduction to *Mussage'i Shav ve-haEmet*, iv. See Zohar, *Jewish Commitment*, 22, 60–61, 86. RḤH, nevertheless, was not blind to flaws in pragmatism; see his *Malki baQodesh*, 2:5–10.

[130] Nima H. Adlerblum, *Memoirs of Childhood: An Approach to Jewish Philosophy*, ed. E. Bendheim (Northvale, NJ: Aronson, 1999), 310. RḤH's thoughts on Jewish education are found in his *Torat haḤinnukh haYisraeli* [in Hebrew; lit. a theory of Hebrew Jewish education] (Bucharest: Weider, 1927). The connections between this book and Dewey's 1916 *Democracy and Education* are worthy of further research. As I learned from Warren Zev Harvey, Nima was a member of the international committee that organized Dewey's ninetieth birthday.

[131] On some shared grounds between Kabbalah and pragmatism, see n. 109 above. Schweid, *Democracy and Halakhah*, 145.

[132] RḤH, *Malki baQodesh*, 6:65.

[133] Schweid, *Democracy and Halakhah*, 145.

baQodesh responsa.[134] Additional contributions to understanding RḤH's thought include the works of Joseph (Yossi) Turner, Avi Sagi, Alan L. Mittleman, Shaiya Rothberg, Ari Ackerman, and David Ellenson, which provide a solid foundation for the current research.[135] Its findings and conclusions concerning RḤH's links to pragmatism may pave new directions for understanding numerous additional Jewish thinkers, whose thought has been described by scholars as pragmatic (see Sec. II.B above).

B. The Application of the Pragmatic Maxim by RḤH

There are various dimensions in RḤH's thought that reflect the PM. Common to them all is the interpretation of traditional religious ideas and norms in light of their earthly consequences in the present, while considering their past instances and their conceivable future ramifications.[136] This is the leitmotiv underlying RḤH's decision making in the cases of women's right to vote in elections, the halakhic status of Shabbat violators, medical autopsies, and many more.[137] All these halakhic cases involve metaphysical premises and beliefs, which RḤH examined halakhically according to their worldly outcomes. Similar to the classical American pragmatists, he was

[134] Zohar, *Jewish Commitment*. Numerous valuable remarks on RḤH's intellectual biography are found in Zohar's comments on *Malki baQodesh*, vols. 1–2.

[135] See Yossi Turner, "Rabbi Hayyim Hirschensohn's Political Philosophy and Its Links to Maimonides and Spinoza" [in Hebrew], *Iggud* 1 (2008): 381–96, and "Authority of the Public in Rabbi Hayyim Hirschensohn's Religious Zionist Thought" [in Hebrew], in *Judaism: A Dialogue between Cultures*, ed. A. Sagi, D. Schwartz, and Y. Z. Stern (Jerusalem: Hebrew University, 1999), 31–56. In these articles Turner examined the potential of the democratic "authority of the public" (*ẓibbur*) to renew halakhic enactments and the ways by which RḤH had validated the legal status of the covenant and the ongoing mutual commitment between Israel and God. See Avi Sagi, *The Open Canon: On the Meaning of Halakhic Discourse* (London: Continuum, 2007), 135–37, 205–15, and "Orthodoxy as a Problem" [in Hebrew], in *Jewish Orthodoxy: New Dimensions*, ed. A. Ravitsky, Y. Salmon, and A. Ferziger (Jerusalem: Magnes, 2006), 21–53; Alan L. Mittleman, "Capitalism in Religious Zionist Theory," in *Markets, Morals, and Religion*, ed. J. B. Imber (New York: Routledge, 2008), 131–40; Shaiya Rothberg, "The Democratization of the Jewish Political Tradition: R. Chaim Hirschensohn's Political Thought and Its Jewish Sources" [in Hebrew] (PhD diss., Hebrew University, 2008); Ari Ackerman, "Judging the Sinner Favorably: R. Chayyim Hirschensohn on the Need for Leniency in Halakhic Decision Making," *Modern Judaism* 22, no. 3 (2002): 261–80; and Ellenson, "Rabbi Haim Hirschensohn."

[136] Gilbert K. Chesterton has brilliantly suggested that tradition is "democracy extended through time. It [tradition] is trusting to a consensus of common human voices rather than to some isolated or arbitrary record" (*Orthodoxy* [New York: Lane, 1908], 124). Chesterton's "diachronic" holism is comparable to Quine's "synchronic" holism about doxastic structures (see Quine, "Two Dogmas of Empiricism"; Brafman, "Critical Philosophy of Halakha") and merits further analysis.

[137] On voting rights, see RḤH, *Malki baQodesh*, 2:372–436; see also Zohar, *Jewish Commitment*, 208–25. RḤH had a significant influence (often implicit) on later halakhic authors, especially with feminist sensitivities, such as rabbis Eliezer Berkovits and Daniel Sperber. See also the remarks at the end of Sec. III.D below. On Shabbat violators, see RḤH, *Malki baQodesh*, 4:200–203; Ackerman, "Judging the Sinner Favorably," 269–70. On medical autopsies, see RḤH, *Malki baQodesh*, 3:137–52; Zohar, *Jewish Commitment*, 254–60; and Nadav S. Berman, "R. Ḥayyim Hirschensohn's Beliefs about Death and Immortality as Tested by His Halakhic Decision Making regarding Autopsies" [in Hebrew], *Da'at* 83 (2017): 337–59.

committed to the primacy of action (or orthopraxy).[138] Here I will elaborate on two instances of the PM in RḤH’s halakhic thought: (1) the well-being of humans as an initial halakhic value and (2) collective halakhic deliberation as a manifestation of the PM. Let us begin the inquiry of Hirschensohn by making two principal comments on how the relationship between religion and morality is conceived by those who deploy the PM.

1. Religion and morality: Conditions for applying the Pragmatic Maxim.—Religious thinkers who see divine commandments as a product of arbitrary divine will,[139] or as an immutable divine dictate,[140] would not accept the PM for evaluating religious content and would rather tend to associate divinity with radical voluntarism and even absurdity.[141] Such deontological doctrines—which typically portray God as an infallible and immutable ruler—subsequently assume an inability of humans to confront God, due to their moral imperfection.[142] Ascribing immutability to divine law, however, suits the Greco-Roman conception of divine law, rather than the prominent biblical and talmudic voices.[143] The idea of the dialectical dependency of religion on morality is dominant in Jewish tradition, even if it has several exceptions.[144] It is not surprising, then, that halakhic sages (including RḤH) who view morality as a basic property of religion (to which even God is attentive) would feel themselves able (and in fact, obliged) to apply the PM to traditional normative content.[145]

[138] “Primacy of action,” or the “priority of practice.” On this inclination in halakhah, see Daniel Rynhold, *Two Models of Jewish Philosophy: Justifying One’s Practices* (Oxford: Oxford University Press, 2005). For this reason, RḤH judged certain liminal heresies favorably—e.g., holding heretical opinions regarding the Bible and its composition, as long as the presumed heretic is not actively spreading those views (*Malki baQodesh* 2:6 [162–71]). Compare Marc B. Shapiro, *The Limits of Orthodox Theology* (Portland, OR: Littman, 2004), 8–10.

[139] On deontological conceptions of God’s will, see Sagi, *Open Canon*, 192–204.

[140] Or as “divine command morality” (DCM). For a defense of DCM, see Philip L. Quinn, *Divine Commands and Moral Requirements* (Oxford: Clarendon, 1978), 23–65. For an analysis of DCM theories, see Avi Sagi and Daniel Statman, *Religion and Morality*, trans. B. Stein (Atlanta: Rodopi, 1995), 9–78.

[141] See, e.g., the citation from Tertullian in n. 101 above. The opposite of antipurposiveness is a “critical common sense” trajectory. For such an approach, see, e.g., the book by Rabbi Gordon Tucker, *Torah for Its Intended Purpose* (Hoboken, NJ: Ktav, 2014), whose purposiveness manifests a pragmatist trajectory.

[142] See James Rachels, “God and Human Attitudes,” *Divine Commands and Morality*, ed. P. Helm (New York: Oxford University Press, 1981), 34–48.

[143] See Hayes, *What’s Divine*, 371–77.

[144] Compare Tamar Rudavsky, “Natural Law Morality in Jewish Philosophy,” in *Reason, Religion and Natural Law*, ed. J. Jacobs (New York: Oxford University Press, 2012), 83–105. The schism between religion and morality was amplified in modernity by Kierkegaard (*Fear and Trembling*, 107–51), who made a categorical distinction between the ethical and the religious, when the latter ultimately suspends the former. In Jewish tradition, however, DCM is not prevalent. See Jacob J. Ross, “Divine Command Theory in Jewish Thought: A Modern Phenomenon,” in *Interpretation in Religion*, ed. S. Biderman and B. A. Scharfstein (Leiden: Brill, 1992), 181–206.

[145] Recalling Plato’s Euthyphro’s dilemma: “Euthyphro,” in *Plato: Complete Works*, trans. G. M. A. Grube, ed. J. M. Cooper (Indianapolis: Hackett, 1997), 2–16, esp. 9–11. For a consideration of this dilemma within the current context, see Sagi and Statman, *Religion and Morality*, 11. There is a strain of Jewish thought that sees such individual discretion as problematic. Some Sages have

The intuition underlying the PM is expressed within the normative-legal context in the modes of amendment, limitation, suspension, or even annulment of morally problematic laws.[146] From a pragmatist perspective, it is assumed that in conflicts of law and ethics, the latter in general overrides the former.[147] This tension between religious principles and deliberative judgment is typical to any normative system (and is reflected in philosophical debates on the primacy of moral considerations).[148] While in the Greco-Roman legal thinking phronesis and equity arguably "have no place in the discourse of the divine natural law," from a halakhic perspective human discretion does not undermine the divinity of divine law.[149] In Hayes's words, in talmudic thinking "the divine law's perfection is not diminished but *constituted* by the fact that it is particular, flexible, responsive and on occasion multiform."[150] These hermeneutic conditions concerning the religious primacy of the ethical were central for RḤH in applying the PM.

2. Hirschensohn on religion and modernity.—Given RḤH's positive attitude toward general philosophy and the "wisdom of the nations" (*ḥokhmah bagoy'im*), he believed that there is a basic correspondence between tradition and modern life: "Jewish religion and life are indeed twins from womb and birth, and none of them shall brake forth on his fellow to deprive him."[151] To RḤH's mind, when conflicts between religion and modernity or morality occur, the responsibility for solving them rests largely on the shoulders of the sages, by using the rich halakhic tools for developing and adapting Jewish law.[152] RḤH asserts that "halakhah does not put stumbling blocks for the

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argued that King Solomon's and King Jeroboam's sins had been performed since the reasons of the commandments (*ta'amei hamiẓvot*) were revealed to them (BT *Sanhedrin* 21b, 102a).

[146] Archetypical models for that are the biblical stories of Abraham in the city of Sodom and in the *aqedah* (Isaac's binding; Gen. 22:1–18); see nn. 76–79 above. On the archetypes of the *aqedah* within halakhic literature, see Avi Sagi, *Morality and Religion: The Jewish Story*, trans. B. Stein (London: Palgrave Macmillan, 2021), 269–83. For a comprehensive critique of Kierkegaard's reading of the Binding, see Goodman, *God of Abraham*, 21–36; and Aaron Koller, *Unbinding Isaac: The Significance of the Akedah for Modern Jewish Thought* (Lincoln: University of Nebraska Press, 2020), 91–126.

[147] In jurisprudence theories, this assumption resonates with nonpositivism. See Ronald Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1978).

[148] The pragmatist emphasis on the priority of the ethical has its parallel in moral philosophers who stress the primacy of ethical considerations. See, e.g., Sarah Stroud, "Moral Overridingness and Moral Theory," *Pacific Philosophical Quarterly* 79, no. 2 (1988): 170–89.

[149] Hayes, *What's Divine*, 326.

[150] Hayes, *What's Divine*, 326. However, Hayes's argument concerning the inherent irrationality of talmudic law (246–86) seems less convincing. The feasible critique of the rationalist conceptions of Jewish law does not imply that pragmatic rationality, as portrayed here, is impossible.

[151] RḤH, "Introduction," in *Malki baQodesh*, 1:5. RḤH's positive attitude toward modernity is interestingly reflected in a correspondence he had with rabbi A. I. H. Kook, regarding the issue of renewing the sacrifices. While Kook suspected modernity and took it to be "silver covering earthenware," RḤH's attitude is more positive (see *Malki baQodesh*, 4:9–10).

[152] See Zohar, *Jewish Commitment*, 76. Additional examples of nominalist rabbinic treatment of biblical law in early Jewish tradition include the enactments of the *prosbul* and selling *ḥameẓ*

development of private life, nor for the development of the nation as a whole. Similar to the life of the individual and the collective, who do not interrupt each other, religion and life are mutually supportive."[153]

RḤH sees the values and principles of Torah as the basis for reconciling tradition and modernity: "Her [the Torah's] ways are ways of pleasantness, and all her paths are peace [Prov. 3:17]. No Torah law would block the way of true civilization, and it does not commit us to do anything against wisdom and reason."[154] In asserting that modernity is no enemy to tradition, RḤH's attitude is surely an optimistic one (although he was not blind concerning the pitfalls of techno-scientific progress, as I demonstrated elsewhere).[155] As such, it stands in contradiction to ultra-Orthodoxy, as propagated, for instance, by Rabbi Moshe Sofer (known as ḤaTaM Sofer) and many other Ḥaredi thinkers up to the present day.[156] On the other side, RḤH is contrasted with radical secularists who undermine the possibility for coexistence and synergy between religion and modernity.[157]

C. Human Flourishing as the Telos of Jewish Law

RḤH's assumption regarding the primacy of morality in Jewish law (or Torah broadly defined) goes both directions. Similar to the Jewish people who are obligated morally by the Sinaitic covenant (and not mere performers of arbitrary laws) and thus have the autonomy and, in fact, the obligation to interpret the instructions of the Torah in accordance with morality, God himself also takes humans, humanity, and human advancement or flourishing as central values in the Torah given to Israel: "The basis of the Torah and its commandments is the benefit of humanity. . . . The ethical-social

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on Passover. On nominalism vs. realism in halakhah, see Yoḥanan Silman, "Halakhic Determinations of a Nominalist and Realistic Nature: Legal and Philosophical Considerations" [in Hebrew], *Diné Israel* 30 (2015): 1–18, and all the articles in this thematic issue.

[153] RḤH, *Malki baQodesh*, 1:20. See also Zohar, *Jewish Commitment*, 78.

[154] RḤH, *Malki baQodesh*, 1:20. See also Zohar, *Jewish Commitment*, 84. RḤH believed that there is no necessary clash between tradition and pursuit of truth (see *Yamim miQedem*, 235).

[155] In undermining the seriousness of evil, RḤH is vulnerable to critics of pragmatism such as Max Horkheimer's 1947 book *Eclipse of Reason* (rev. ed. [London: Continuum, 2004]), 3–62. The fact the RḤH died before World War II may account for his optimism. See Berman, "R. Ḥayyim Hirschensohn's Beliefs."

[156] For a manifestation of Sofer's slogan "the 'new' is forbidden by the Torah," see *Ḥatam Sofer Responsa* [in Hebrew], *Oraḥ-Ḥayyim*, sec. 28 (Jerusalem: ḤaTam Sofer Institute, 2008), 51–52. It should be noted, though, that ultraorthodoxy is a complex phenomenon like any other ideological group, and at it times expresses pragmatic trajectories. See Benjamin Brown, "Jewish Political Theology: The Doctrine of Da'at Torah as a Case Study," *Harvard Theological Review* 107, no. 3 (2014): 255–89.

[157] An example for that is Richard Rorty, "Religion as a Conversation Stopper," *Common Knowledge* 3 (1994): 1–6. Compare Stuart Rosenbaum, "Must Religion Be a Conversation-Stopper?," *Harvard Theological Review* 102, no. 4 (2009): 393–409, who discusses Rorty's approach as well as Jeffrey Stout's. However, Rosenbaum does not explore the postsecular possibility that the watershed line is not necessarily religion vs. secularism but pragmatism (religious or secular) vs. fundamentalism (religious or secular).

commandments (*ben adam le-ḥavero*) and the ritual commandments (*she-ben adam la-maqom*) are all for the merit of humanity."[158] Put differently, the advancement of the human condition and society is an intrinsic value in light of which the halakhah should be interpreted: "Religion is but one of the vital aspects of the national conditions of life, though it benefits the people, improves their morality and enriches their spiritually."[159] According to RḤH—and many other pragmatist halakhists—purposiveness is vital to halakhah, and the deprivation of such teleology is harmful.[160] This anchoring of morality within Mosaic law provides the backdrop for the PM in the Jewish context: divine instruction is interpreted (in various dialectical manners, clearly) against its intended moral import. The earthly realm is where the divine message is tested, but the goodness of the expected outcomes is measured by characterizations of the good whose basis is found in Scripture. As we saw in Section II.B, there is no clear-cut formula for predicting the outcomes of the encounter between the divine instruction and how humans perceive it. For this reason, human resentment, dialogue, and confrontation are a built-in option in Jewish normative tradition.[161] These mechanisms comprise the building blocks of what can be termed the Pragmatist Religious Sociality of Reason.

The interpretation RḤH gives to the concept of idolatry is a fascinating case study for the application of the PM. Idolatry is often associated with a false material and anthropomorphic representation of God. A famous example for that is Maimonides, who considered any positive mental representation of God as an idolatrous transgression.[162] However, as Leora Batnitzky has noted following Hermann Cohen, the cognitive and representational aspect of idolatry is entangled with its performative aspects.[163] Accordingly, RḤH's understanding of the problematic of idolatry is praxis centered: "What is a proper worship [*avodah yesharah*] and what is idolatry? The proper worship is the one which elevates the human spirit [*asher mo'elet leromemut nefesh ha-adam*], while idle or harmful worship is the one considered idolatry."[164]

[158] RḤH, *Lu'aḥ Mo'adei Yisrael* [in Hebrew; lit. Jewish festivals calendar] (New York: Shaulsohn, 1935), 35–36.

[159] RḤH, *Malki baQodesh*, 4:244. Compare Zohar, *Jewish Commitment*, 242–47.

[160] See Zohar, "Teleological Decision-Making."

[161] See Matthew S. Goldstone, *The Dangerous Duty of Rebuke: Leviticus 19:17 in Early Jewish and Christian Interpretation* (Leiden: Brill, 2018). I am indebted to Dov Weiss for referring me to Goldstone's book.

[162] See Maimonides, "Hilkhot Yesodei haTorah" [Basic principles of the Torah], chaps. 1–2, in *A Maimonides Reader*, ed. I. Twersky (New York: Behrman, 1972), 43–47, and Maimonides's *Guide*, mainly the lexicographic chapters of pt. 1. On Maimonides's understanding of idolatry, see Moshe Halbertal and Avishai Margalit, *Idolatry*, trans. N. Goldblum (Cambridge, MA: Harvard University Press, 1992), 152–59.

[163] See Hermann Cohen, *Religion of Reason out of the Sources of Judaism*, trans. S. Kaplan (Atlanta: American Academy of Religion, 1995), chaps. 1–2; Leora Batnitzky, *Idolatry and Representation: The Philosophy of Franz Rosenzweig Reconsidered* (Princeton, NJ: Princeton University Press, 2000), 54–61.

[164] RḤH, *Mussage'i Shav ve-haEmet*, 86; see also 92.

Idolatry, according to RḤH, is examined consequentially, by its earthly fruits (or rotten fruits): if a certain religious practice improves moral and religious life, it is considered as worthy worship. Yet if it makes for the opposite, it is demonstrably false and idolatrous.[165] Can RḤH's approach be described as utilitarian? It seems that he followed the ethical strand of Jeremy Bentham and John Stuart Mill that influenced the classical American pragmatists and the formation of the PM (which in its turn has its antecedents in biblical and halakhic utilitarianism).[166] Facing the modern discourse, RḤH demonstrated an interesting hermeneutical maneuver with respect to idolatry. While Karl Marx argued that both capital and religion deprive humans of their moral value, in a kind of idolatrous dehumanization, RḤH implicitly opposed Marx's antireligious critique, arguing that the moral perspective is not only relevant to religious deliberation but indispensable to it.[167] According to RḤH, impairing the humane is itself a kind of idolatry. Rather than conceiving idolatry as a cognitive act, he examines it by its moral performative ramifications.[168]

D. The Pragmatic Maxim on the Social Level: "The Agreement of the Public"

The notion that human agreement might constitute truthfulness is of significant pragmatist value. In the philosophy of science this trajectory is found in Conventionalism, which takes conventions seriously, rather than viewing them as mere contingent fictions.[169] Acknowledging the rational, pragmatic purport of human agreement is contrasted with the view that truth is nothing but a propositional property that can only be true or false; this latter kind of radical foundationalism is akin to Descartes's rationalism (see Sec. I.B above). Whereas in the philosophy of science, conventionalism implies that human agreement might constitute truthfulness (however

[165] What exactly are the ways to examine such negative influence exceeds the scope of the current study.

[166] Compare Heinemann, *Reasons for the Commandments*, and Sec. II.B above, on the appearance of the PM in Jewish tradition.

[167] *Writings of the Young Marx on Philosophy and Society*, trans. L. D. Easton and K. H. Cuddat (New York: Doubleday, 1967), 289–90. For a perspective on Marx from modern Jewish thought in the context of idolatry, see Batnitzky, *Idolatry and Representation*, 3–6. There are, to be sure, important differences between Marx's and RḤH's approach to the economic dimension in human life. See, in a wider context, Berman, "Interest, Disinterestedness, and Pragmatic Interestedness."

[168] My aim here is not to validate or falsify RḤH's argument concerning idolatry on the practical level (does monotheism really improve human morality?) but to consider his methodology vis-à-vis the PM. For a skeptical approach regarding the positive ethical ramifications of monotheism, see Jan Assmann, *The Price of Monotheism*, trans. R. Savage (Stanford, CA: Stanford University Press, 2009).

[169] See Yemima Ben-Menaḥem, *Conventionalism: From Poincaré to Quine* (New York: Cambridge University Press, 2006). It is no coincidence that Ben-Menaḥem has a scholarly interest in pragmatism (see, e.g., Ben-Menaḥem, "Introduction").

fallible), in the religious realm it is paralleled by the idea of covenant (or Covenantalism, if you will), which has—so I believe—major pragmatist tendencies. Pragmatism, as the classical American pragmatists and many neopragmatists recognize, is the open realm where people can give and take reasons, in a dialogical, future-oriented, and nondogmatic manner.

Covenant is the basic theme and scheme of RḤH's use of the PM. He dedicated a three-volume book (*Elleh Divrei haBrit*) to the review and analysis of the unfolding of biblical covenants, from the Noachide, universal covenant with the entirety of humanity (Genesis 1–10) to the Israelite covenant (Exodus 20). Loyal to his democratic-halakhic commitment, RḤH understood that as a covenant occurs between a caring God and fallible human beings, the possibility of sin plus the possibility of divine repentance create the possibility, and in fact the necessity, of renewal and amendment of earlier biblical covenants.[170] The constitution of covenant is hence not a one-time event (at Mount Sinai) but rather a process of covenant making or covenantizing. This process is documented throughout the Pentateuch and later in the books of Joshua, Samuel, the Judaean kings (David, Solomon, Josiah, and so on) up to Ezra and Neḥemiah.

Covenant thus pertains, according to RḤH, to the collective status of the people of Israel in the ever-renewing commitment.[171] By "collective status of the people of Israel" I refer to the conception of the Jewish public as having a certain type of collective intentionality.[172] RḤH's concept of the "agreement of the public" (*haskamat haẓibbur* or *haskamat harabim*) denotes the elusive phenomenon of a group of people who collectively deliberate matters of interest and concern.[173] This kind of democratic reasoning is the ground for understanding the application of the PM in a social Jewish context. Its rationale is as follows. When a human collective is conceived of

[170] For elaboration, see my "20th Century Jewish Thought," 188–95. For an argument that the written law (Torah) should initially be seen as a dynamic set of oral-law traditions (*torah she-be'al peh*), see Benjamin D. Sommer, *Revelation and Authority: Sinai in Jewish Scripture and Tradition* (New Haven, CT: Yale University Press, 2015), 147–70. To Sommer's mind, the Participatory Theology he discusses "implies a new understanding of Judaism's canon: *there is no Written Torah; there is only Oral Torah, which starts with Genesis 1.1*" (147).

[171] It is important to note that RḤH's usage of the term "nation" (*am*), differs from the common reference of this term in contemporary Zionist-religious Israeli public, which is often more particularistic, or less universalistic. Covenantality is of course not exclusive to Jewish thought; see n. 182 below. In regard to ever-renewing commitment, RḤH's covenant theology relates to what Yoḥanan Silman has termed as the "being ever perfected" halakhic approach, in his *The Voice Heard at Sinai: Once or Ongoing?* [in Hebrew] (Jerusalem: Magnes, 1999), 119–49.

[172] I do not have in mind the nineteenth-century organistic conceptions of nation formation but something akin to what is often called today "social epistemology."

[173] On this democratic authority of the public in RḤH, see his *Malki baQodesh*, 3:68–88, and *Elleh Divrei haBrit*, 3:15. Collective intentionality is manifested in Judaism in other contexts. See, e.g., Joseph David's analysis of "covenantal memory" (David, *Jurisprudence and Theology*, 123). Clearly, the ability to deliberate collectively is weakened in the age of incommensurability, namely, the lack of a shared axiological ground. See Alasdair MacIntyre, "The Relationship of

as nothing but the servants of God in a covenant based exclusively on obedience, there is no room for pragmatic human reasoning and for the PM as such.[174] In such a scenario, divine commandments are typically considered as irrational statutes (*ḥuqqim*) and not as rational laws (*mishpatim*).[175] However, in a dialogical covenantal conception of theology and the political, which is dominant in Jewish tradition (but not exclusive to it), the human collective is perceived as having an autonomous deliberative capacity.[176] RḤH assumes that there exists an interpretive continuity throughout the generations, which sets the ground for the possibility of future generations to engage with the ancient Sinaitic covenant. Moreover, the ability of later generations to take active part in the ongoing formation of Jewish law is predicated on such a conception of historical continuity.[177] On such a framing, the aggregate deliberations of the people can be conceptualized as a collective deployment of the PM. The "agreement of the public" is understood by RḤH as a form of partnership (albeit asymmetrical and not equal) with God,[178] in the unfolding constitution of the covenant: "The [divine] covenant is articulated in accordance with the ordinary inter-human terms by which the people set their agreements. This is the real type of this nation-covenant [*brit am*], and . . . should not be imposed by strong-arming, coercion, or compulsion."[179]

Philosophy to Its Past," *Philosophy in History*, ed. R. Rorty, J. B. Schneewind, and Q. Skinner (Cambridge: Cambridge University Press, 1984), 31–48; and Jonathan Cohen, "Deliberation, Tradition, and the Problem of Incommensurability: Philosophical Reflections on Curriculum Decision Making," *Educational Theory* 49, no. 1 (1999): 71–89.

[174] As Jonathan Sacks observed, the English verb "to obey" has no direct equivalent in early Judaism: when the biblical God instructs Israel to "hear," it means to receive a reasonable and moral voice. See Jonathan Sacks, *Lessons in Leadership: A Weekly Reading of the Jewish Bible* (New Milford, CT: Maggid, 2015), 251–56, on *parashat* (Ekev).

[175] The source of these terms is the rabbinic distinction between *ḥuqqim* and *mishpatim* (see BT *Yoma* 67b) and the later distinction by rabbi Sa'adiah Gaon (or RaSaG; see Saadya Gaon, *The Book of Doctrines and Beliefs*, trans. A. Altmann, repr. with introd. by D. H. Frank [Indianapolis: Hackett, 2002], 93–114) between rationally comprehended (*sikhli'yot*) commandments and categorically uncomprehended (or *shim'iyot*) ones. Heinemann, *Reasons for the Commandments*, 51–56.

[176] RḤH's idea of the "agreement of the public" could have been influenced, according to Eliezer Schweid, by the German legal scholar Friedrich Carl von Savigny (1779–1861), who influenced Zacharias Frankel, the nineteenth-century rabbi. Savigny is considered as the founder of the Historical school in legal theory, which conceived national morality as rooted in traditional sources, when the present legislators try to interpret these traditions pragmatically. See Eliezer Schweid, *A History of Modern Jewish Religious Philosophy*, vol. 2, *The Birth of Jewish Historical Studies and the Modern Jewish Religious Movements*, trans. L. Levin (Leiden: Brill, 2015), 228–44.

[177] See RḤH, *Mussage'i Shav ve-haEmet*, 93–94; and Turner, "Authority of the Public," and "Rabbi Hayyim Hirschensohn's Political Philosophy," 31–35.

[178] Similarly, Kenneth Seeskin writes that "the reason the Bible emphasizes consent is that it wants to say that human beings participate in the holy order not as slaves but as moral agents. Rather than authorship, the Bible presents the idea of appropriation under the guise of partnership" (*Autonomy in Jewish Philosophy* [Cambridge: Cambridge University Press, 2001], 50).

[179] RḤH, *Elleh Divrei haBrit*, 3:56. On the moral values and principles of the Jewish covenant, see Tal Z. Zarsky and Nadav S. Berman, "What Is the Juxtaposition between the Silicon Valley

Given the voluntariness of the ancient Israelite covenant, RḤH emphasized the indispensability of covenantal consent.[180] This observation is internal to the rabbinic worldview: the talmudic sages were concerned by the seeming imposition of the Torah on the Israelites at Mount Sinai. The sages consequently claimed that the Israelites reaffirmed their covenantal commitment later in the days of Mordecai and Queen Esther in Persia, in the early Second Temple period.[181] RḤH was also deeply inspired by the federal American political structure. This modern political vision, we should recall, was in its turn founded on the Hebraist ethos, according to which no covenant is acceptable unless the public acknowledges its ethical validity.[182] RḤH's agreement of the public is thus a retroactive approval of God's laws by the Jewish public, through the very act of interpreting and voluntarily practicing them. The outcome of such covenantal theological normativity is the possibility of disapproving God's laws. As RḤH remarks, such hermeneutic veto goes as far as suspending divine law: "But if the majority of the public is not capable of fulfilling it [a certain rabbinic enactment, or *gzerah*] due to difficulties it poses to the demands of daily life, this enactment does not apply to them [the public] at all and it is cancelled . . . for the extension [*ḥallut*] of the enactment and its details are particular to each and every congregation."[183]

This context sensitivity has its roots within the talmudic law, which states that no legislation should be made by the rabbis unless the public can perform

and Mount Sinai? Covenantal Principles and the Conceptualization of Platform-User Relations," *Journal of Law and Religion* (forthcoming).

[180] On the question whether the ancient covenant still binds for later generations, see RḤH's *Elleh Divrei haBrit*, 1:75–80. Rabbi David Hartman has similarly argued that human transactions are the prototype of covenant theology. See the chapter "Fundamentals of a Covenantal Anthropology," in Hartman's *A Living Covenant: The Innovative Spirit in Traditional Judaism* (Woodstock, VT: Jewish Lights, 1997), 21–41.

[181] BT *Shabbat* 88a. The textual jumping board for this discussion is Exod. 19:17: "and they stood at the bottom [*be-taḥtit*] of the mount," which is interpreted by the Sages to mean that the Israelites stood under Mount Sinai and were forced by God to accept the Torah, lest they be buried there. See Gerald J. Blidstein, "In the Shadow of the Mountain: Consent and Coercion at Sinai," *Jewish Political Studies Review* 4, no. 1 (1992): 41–53.

[182] See, e.g., Daniel J. Elazar, "The Role of Federalism in Political Integration," in *Federalism and Political Integration*, ed. D. J. Elazar (Lanham, MD: University Press of America, 1984), 13–58. Recently, Philip Gorski has provided a comprehensive account of the American "civil religion" as predicated on such covenantal basis. See Gorski, *American Covenant: A History of Civil Religion from the Puritans to the Present* (Princeton, NJ: Princeton University Press, 2017). In the context of CAP, it is no wonder that Gorski discusses Dewey's contribution to American "civil religion" (111–20). RḤH, *Elleh Divrei haBrit*, 3:59.

[183] RḤH, *Malki baQodesh*, 2:100–101; and Zohar, *Jewish Commitment*, 86. In Jewish tradition such hermeneutic occasion is often accompanied by the phrase *et la'asot la-Hashem* (as in "It is time to act for God, for they have made void Thy law"; Ps. 119:126). This religious statement typically marks the appearance of a normative-halakhic hermeneutic revolution, conceived to be authorized by God himself. See Yuval Blankovsky, *Sin for the Sake of God* [in Hebrew] (Jerusalem: Magnes, 2017).

it.[184] Such suspension of divine law, however, applies to *gzerot*, or rabbinic (*derabbanan*) enactments, and not to biblical commandments.[185] RḤH's conceptualization of the covenantal model is thus predicated on the possibility of suspending morally problematic religious customs and allowing the traditionally committed development of new ones.[186] The wisdom of the public thus has great importance for the formation and acceptance of the religious covenant and for its development throughout the ages.[187]

However, the agreement of the public does not rely solely on voluntary human acceptance. According to RḤH, the procedures of normative collective change processes should be based on values and principles within the legal halakhic tradition.[188] However, this internality is dialectical, as the people of Israel have an active role, de facto, in establishing the authority of Torah and its commandments.[189] Insofar as the covenantal model is internal to the Pentateuch and to Jewish tradition, the agreement of the public is in fact de jure and not only de facto. Whether RḤH revolutionizes or only preserves the traditional conception of the covenant between God and Israel depends, of course, on one's evaluation of Jewish tradition.[190]

Hirschensohn's covenantal ethos, which has solid roots in Jewish tradition, appears later in significant rabbis and scholars who lived after him: Eugene B. Borowitz, David Hartman, Daniel J. Elazar, Jonathan Sacks, Irving (Yitz) Greenberg, David Novak, Judith Plaskow, Laurie Zoloth, Alan L. Mittleman,

[184] See BT *Avodah Zarah* 36a. For an analysis of this rule, see Menachem R. Macina, "We Should Not Impose an Enactment upon the Community Unless the Majority of the Community Will Be Able to Abide It" [in Hebrew], *Tarbiẓ* 54 (1985): 447–53.

[185] Even though RḤH's stance seems radical, we should recall that there are numerous instances for suspending biblical (*de'oraita*) commandments. See, e.g., Eliezer Berkovits, *Not in Heaven: The Nature and Function of Jewish Law* (Jerusalem: Shalem, 2010), 86–106; Moshe Halbertal, *Interpretative Revolutions in the Making: Values as Interpretative Considerations in Midrashei Halakhah* [in Hebrew] (Jerusalem: Magnes, 1997); Schremer, "Between Radical Interpretation and Explicit Rejection."

[186] Kabbalat Shabbat is a key example of such historical development. See Reuven Kimelman, *The Mystical Meaning of Lekha-Dodi and Kabbalat Shabbat* [in Hebrew] (Jerusalem: Magnes, 2003), 1–32.

[187] In this vein, RḤH argued that renewing Jewish sovereignty in the land of Israel should lead to the reestablishment of rabbinic ordination (*semikhah*); see *Malki baQodesh*, 2:30.

[188] In relation to the suggestion of the British governor of Palestine to add secular Jews to the Rabbinical Court, RḤH replied that it should at least be considered. Nevertheless, RḤH insisted that the basis for any halakhic modification ought to be rooted in Halakhah's internal premises (see *Malki baQodesh*, 4:221–29; and Zohar, *Jewish Commitment*, 152 n. 40).

[189] See Zohar, *Jewish Commitment*, 88; and Turner, "Authority of the Public." The ability of humans to take part and participate in the unfolding of divine law is intertwined with the talmudic conception of God as participatory lawgiver and of law as reflecting that. See, e.g., BT *Menaḥot* 29b, describing God as sitting and "tying crowns" to the letters of the Torah.

[190] Adam S. Ferziger contends that RḤH's approach is located off orthodoxy. See Ferziger, "Hungarian Separatist Orthodoxy and the Migration of Its Legacy to America: The Greenwald-Hirschensohn Debate," *Jewish Quarterly Review* 105, no. 2 (2015): 250–83. There are, however, reasons to question that, given the accordance between RḤH's halakhic approach and that of the talmudic tradition (see Sec. II.B above). See my remarks in "20th Century Jewish Thought," 184 n. 255.

and others have stressed the indispensable role that the people of Israel have in establishing the very commandability of the Torah.[191] This, however, is not to say that in such pragmatic approaches there is no real, ontotheological, divine Thou. On the contrary: assuming the realness of a dialogical and caring God might be a substantial postulate for enabling the application of the PM, as I propose below.

E. RḤH's Application of the Pragmatic Maxim: A Summary

Let us sum up this section. Hirschensohn viewed Jewish law as oriented toward human morality and flourishing and thus deployed the PM. RḤH applied the PM to socioethical laws but also to ritual ones: these commandments that are seemingly vertical (i.e., God oriented) ought to create a horizontal sanctification of God's name (*kiddush hashem*), as they are expected to leave a positive impression on the surrounding non-Jewish society.[192]

RḤH's deep appreciation for Arthur James Balfour and his pro-Zionist 1917 declaration reflects such a trust in the ability of the nations and non-Jews to acknowledge Israel's covenant.[193] At the same time, this bidirectional, universal openness implies that Jews ought to be attentive to non-Jewish critique.[194] After all, in RḤH's eyes, as in Jewish law more generally,

[191] See Eugene B. Borowitz, *Renewing the Covenant: A Theology for the Postmodern Jew* (Philadelphia: Jewish Publication Society, 1991). According to Martin Kavka, "The Perils of Covenant Theology: The Case of Eugene Borowitz," *Journal of Jewish Ethics* 1, no. 1 (2015): 92–113, at 97, Borowitz was the first to use the English term "covenantal theology" in the Jewish context, in 1961. See Hartman's *Living Covenant* and many of his other works. See, e.g., Daniel J. Elazar and Stuart A. Cohen, *The Jewish Polity: Jewish Political Organization from Biblical Times to the Present* (Bloomington: Indiana University Press, 1985). See Jonathan Sacks, *Crisis and Covenant: Jewish Thought after the Holocaust* (Manchester: Manchester University Press, 1992), and many—in fact, most—of Sacks's other books. See Irving Greenberg, *For the Sake of Heaven and Earth* (Philadelphia: Jewish Publication Society, 2004), and many additional books by him. See, e.g., David Novak, *The Jewish Social Contract* (Princeton, NJ: Princeton University Press, 2005). See Judith Plaskow, *Standing Again at Sinai: Judaism from a Feminist Perspective* (New York: Harper, 1991). See Laurie Zoloth, *Health Care and the Ethics of Encounter* (Chapel Hill: University of North Carolina Press, 1999). See Mittleman, *Scepter Shall Not Depart from Judah*, and additional works by him.

[192] See RḤH, *Torat haḤinnukh haYisraeli*, 30, in the case of phylacteries (*teffilin*), and compare to Hacohen, "Wherefore Should the Nations Say?"

[193] RḤH mentioned the year count to the Balfour Declaration in the title page of his (RḤH's) books, e.g., the *Malki baQodesh* volumes; see Ellenson, "Rabbi Haim Hirschensohn," 253–54. Interestingly, Ellenson does not engage with pragmatism in RḤH's context, even though Balfour himself was recognized by the classical American pragmatists as an important philosopher. See, e.g., William James's citation from Arthur James Balfour's book *Foundations of Belief* (New York: Longmans, 1895) in James, *Pragmatism*, 76. On the indebtedness of humanity to the Hebraic legacy, see Balfour, *Foundations of Belief*, 331. On Balfour's engagement with the Jewish legacy, see Guy G. Stroumsa, "Arthur James Balfour's Religious and Intellectual World," *Proceedings of the Israel Academy of Sciences and Humanities* 9, no. 5 (2018): 97–108. This article, though, does not consider Balfour's pragmatist inclinations.

[194] An example for such Jewish openness (which stems from self-confidence, rather than self-hate) to non-Jewish critique is Yitzchak Breitowitz, "The Hidden Blessings of Anti-Semitism," *Jewish Action*, Fall 2019.

Jews share the Noachide covenant with humanity as a whole—the Jewish covenant "is not an island," to paraphrase A. J. Heschel.[195] At the inner Jewish level, RḤH preserved the traditional Jewish values, norms, and terms, while emphasizing their humaneness.

IV. POSTSCRIPT: VICISSITUDES OF THE PRAGMATIC MAXIM IN MODERN JUDAISM

Returning to the question posed at the outset of this article, it seems that the encounter with CAP and the PM indeed brought RḤH to express pragmatic halakhic inclinations more intensively. Yet, how can one explain the fact that RḤH's pragmatic stance seems relatively marginal in Jewish modern thought? Why do pragmatist Jewish thinkers often struggle when aiming to present such opinions as authentically Jewish? Let me point out some channels for addressing this question.

A. How Did the Pragmatic Maxim Come to Be Perceived by Many as External to Judaism?

At this stage we can reflect more broadly on the role of the PM in modern Judaism. As we saw above (Sec. II.B), the PM has a significant place in Jewish tradition. In the present, there are various questions that have been addressed pragmatically—such as concerning the status of women, bioethics, social justice, environmentalism, and more—across Jewish affiliations including Conservative, Orthodox, and Reform.[196] Yet, there is a strong impression among many Jews that Jewish civilization does not sufficiently stand up to these challenges (ethical, environmental, and others) in pragmatic ways.[197] What could be the source for the relative marginality of pragmatism and of the moral intuition here conceptualized as the PM, in modern Jewish thought?[198] Let me propose two possible reasons.

[195] See Abraham Joshua Heschel, "No Religion Is an Island," *Union Seminary Quarterly Review* 21, no. 2, pt. 1 (1966): 117–34. On the prospects of covenantal thinking for the discussion of some contemporary problems of law and tech, see Zarsky and Berman, "What Is the Juxtaposition."

[196] For an attempt to address the environmental crisis in an integrative manner, see Ariel Evan Mayse, "Where Heaven and Earth Kiss: Jewish Law, Moral Reflection and Environmental Ethics," *Journal of Jewish Ethics* 5, no. 1 (2019): 68–110.

[197] See, e.g., Yoav Sorek, *The Israeli Covenant* [in Hebrew] (Tel Aviv: Yedi'ot, 2015), 261; Stern and Sheleg, *Jewish Law and Zionism*, 11–12.

[198] On stagnation processes in Jewish law and counterattempts to restore its vibrancy, see Chanan Gafni, *Conceptions of the Oral Law in Modern Jewish Scholarship* [in Hebrew] (Jerusalem: Zalman Shazar, 2019). On the legal status of Jewish law in Israeli legislation, see Benjamin Porat, *A Proposal to Amend the Foundations of Law Act, with an Analysis and Critique by Mordechai Kremnitzer* [in Hebrew] (Jerusalem: Israel Democracy Institute, 2015).

1. Perceiving discretional critique of Jewish law as external.—Elsewhere I argued that perhaps it is the deep affiliation between fallibilism in Judaism and the pragmatic fallibilism of CAP (and as found in modernity more broadly), which led to the increasing of halakhic stringencies.[199] Equivalently, I wish to suggest here that the encounter of Jewish tradition in modernity with the PM, as manifested in CAP, may have led to fundamentalist reactions, due to the proximity of Judaism and modernity in this regard and not due to an irresolvable contrast; a narcissism of minor differences, if you will.[200]

In this context, it is possible that the decrease of halakhic openness in Jewish Orthodoxy and in religiously conservative circles was inflated by the (misguided) feeling among Jews that the PM is merely an external critique of Jews, rather than vital halakhic sensitivity and intrinsic legal intuition. In fact, the opposite could be argued, namely, that dialogical confrontation is in itself Jewish (or Hebraic; see Sec. II.B above), as various external observers such as William Barrett have argued.[201] The categorical mistake of appropriating discretional halakhic critique as external to Judaism—whose origin is St. Paul's rejection of the authoritativeness of Mosaic law and the dichotomy between letter and spirit (Romans 2)—was intensified in the early modern era by Martin Luther's reformation.[202] This Judeo-Christian tension pushes halakhic authors—regardless of whether they are fully aware of the source of this anxiety—toward halakhic stringency, even when such rigidity is not required by the dominant or relevant antecedents in halakhic tradition.[203] Yet, there is in Jewish tradition a unique attentiveness toward fallibility and a positive attitude toward divinity, which nourish the ability to apply the PM. These currents were concisely described by Peter L. Berger:

> There is, finally, another feature of Judaism that may have had part in shaping Jewish comic culture—a distinctively Jewish conception of the relation between God and man. More than people of any other religious tradition, Jews have *argued* with

[199] For a suggestion that modern halakhic stringencies could be seen as conceptually related to Cartesian radical foundationalism, see Berman, "Pragmatism and Jewish Thought," 126–31.

[200] Consider, e.g., Yuri Slezkin's observation that opens his book *The Jewish Century* (Princeton, NJ: Princeton University Press, 2019): "The modern age is the Jewish age" (1).

[201] "Protestantism later sought to revive this face-to-face confrontation of man with his God, but could produce only a pallid replica of the . . . wholeness of this original Biblical faith. Protestant man had thrown off the husk of his body . . . but no longer the man of flesh and belly . . . that we find in the Bible. Protestant man would never have dared confront God and demand an accounting of His ways" (William Barrett, *Irrational Man: A Study in Existential Philosophy* [New York: Anchor, 1962], 75–76). See the observation by Erich Fromm in n. 56 above.

[202] See n. 48 above. Furthermore, Luther's anti-Semitism obviously added further suspicion toward ideas. See Ḥaim Hillel Ben-Sasson, "The Jews Facing the Reformation" [in Hebrew], *Proceedings of the Israeli Academy of Sciences* 4, no. 5 (1971): 62–116.

[203] There are, of course, many open Orthodox halakhists who know the possibilities and constrains of halakhic change (rather than being paralyzed by the "shadow of St. Paul"), such as rabbis Daniel Sperber, David Bigman, Benny Lau, Michael Avraham, and others.

God . . . Jacob wrestling with God, Job questioning God's dealings with him. Later Jewish texts have much more of this, for example in the literature of Hasidism. It would be another misinterpretation to see this as a lack of reverence. Rather, it is more plausible to understand this as a profoundly religious conviction of God's moral perfection: If God is morally perfect, He cannot be inferior to man in His accessibility to moral argument.[204]

Berger stresses the significance of interpersonal interaction (human-human, human-divine) to the religious ecosystem. Absent this relationality, whose mark is (inter alia) humor, the application of the PM is less likely to occur. Let us say a few words about the significance of dialogical openness for the possibility of the PM.

2. Sidelining of relationality in modern discourses.—Another possible reason for the relative marginalization of the PM in the landscape of modern Jewish thought is the rise of atomistic or segregationist (rather than holistic or pragmatist) worldviews. Despite various dialogical currents in late nineteenth and early twentieth century philosophy,[205] both the monistic and the dualistic tendencies seem to persist and to marginalize relationality, insofar as they sideline the possibility of dialogue and encounter and the very viability of the category of the possible (vs. determinism on the one hand and contingency on the other).[206]

The separational trajectory has expression in the belief that values are totally separate, and separable, from halakhah. This non- or antiholistic view was criticized by Noam Zohar in the context of the concept of metahalakhah and, more precisely, in the context of certain conceptions of the role of metahalakhah in Jewish law.[207] The marginalization of ethical values from halakhic discourse seemingly intensified because of the dominant (pseudoscientific) assumption of "methodological atheism."[208] This seemingly neutral worldview holds that natural phenomena can be investigated while fully bracketing their metaphysical (including religious) contexts.[209] Such dualist separation between the physical and the metaphysical makes

[204] Peter L. Berger, *Redeeming Laughter* (Berlin: de Gruyter, 1997), 93–94. Interestingly, both Weiss, *Pious Irreverence*, and Fisch, *Covenant of Confrontation*, did not examine (to my best knowledge) the possible role of humor within rabbinic confrontational culture.

[205] See, e.g., Lovejoy, *Revolt against Dualism*; and Hartshorne, *Divine Relativity*.

[206] Regarding sidelining the possibility of dialogue and encounter, see Fackenheim, *Encounters between Judaism and Modern Philosophy*, 24–25, which contrasts between "believing openness" and "subjectivist reductionism." See nn. 81–83 above.

[207] Noam Zohar, "Development of Halakhic Theory as an Essential Basis for Philosophy of Halakhah" [in Hebrew], in *New Streams in the Philosophy of Halakhah*, ed. A. Ravitzky and A. Rosenak (Jerusalem: Van Leer & Magnes, 2008), 43–63.

[208] See Peter L. Berger, *The Sacred Canopy* (New York: Anchor, 1967), 100.

[209] Such trajectory was amplified by the dominant views of Foucault and Barthes concerning the "death of the author," according to which assuming (at least) the "as if" existence of

the possibility of resolving halakhic problems more challenging, for as mentioned above, PM is the examination of metaphysics considering its earthly manifestations. Strictly segregating between heaven and earth, between the divine and the human, then, weakens the possibility for the application of the PM (this hypothesis obviously requires elaboration).

The intellectual segregation resulting from methodological atheism has its background on the so-called Radical Theology, or the "death of God" theology (which has its root in Nietzsche's saying "God is dead").[210] Even among the religion-affirming sociologists of the early twentieth century, we find that a dialogical and flexible encounter with the traditional past was not a real option.[211] The horrors of the Holocaust and its theological aftermath seemingly intensified this hermeneutic crisis.[212] The connection between belief in God as a living experience (or an absence of such belief) and halakhic leniency (or stringency) was famously suggested by Haym Soloveitchik: "Having lost the touch of His presence, they seek now solace in the pressure of His yoke."[213] Turning away from a relation to a near God (*Elohim qerovim*, as Deut. 4:7 describes the God of Israel), who might be a dialogical interlocutor, and shifting from relationality to mechanism, might harm the vitality of Jewish normative discourse.[214]

Given the above discussion (Sec. I.A) of the indispensability of metaphysical commitments in CAP, it is clear how erasing (or even phenomenologically bracketing) the presence of the presumed divine author might harm the capacity and scope of exegetical flexibility. Deprived of a basic teleological orientation, and having commandments without a living author

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past authors makes no sense. For a relevant critique of the French Literary Criticism school in this regard, see Cheryl Walker, "Feminist Literary Criticism and the Author," *Critical Inquiry* 16, no. 3 (1990): 551–71.

[210] Or "Gott ist tot." See Friedrich W. Nietzsche, *Thus Spoke Zarathustra*, trans. G. Parkes (New York: Oxford University Press, 2005), 9–11. At the same time, Nietzsche contributed vastly to the promotion of worldly ethical discourse, and here there are some affinities to pragmatism; see my "Peculiarly Interesting Disinterestedness: A Pragmatist Reading of Mishnah Avot 5:16," *Journal of Jewish Ethics* (forthcoming).

[211] See Hizky Shoham, "Rethinking Tradition: From Ontological Reality to Assigned Temporal Meaning," *European Journal of Sociology* 52, no. 2 (2011): 313–40. Shoham argues that since Max Weber, "Modernity was defined as the opposite of tradition, while tradition remained the unanalyzed empty signifier of the anti-modern" (320). This scholarly dogma, Shoham suggests, became weaker in recent decades, inter alia by the influence of protraditional dialogical approaches of scholars such as Edward Shils.

[212] For a critical consideration of this intellectual movement, see Eliezer Berkovits, *Faith after the Holocaust* (Hoboken, NJ: Ktav, 1973), 50–66. See also Abraham Joshua Heschel, *Who Is Man?* (Stanford, CA: Stanford University Press, 1965).

[213] Haym Soloveitchik, "Rupture and Reconstruction: The Transformation of Contemporary Orthodoxy," *Tradition* 28, no. 4 (1994): 64–130, at 103; cf. Daniel Statman, "Negative Theology and the Meaning of the Commandments in Modern Orthodoxy," *Tradition* 39 (2005): 58–71. For an attempt to reconstruct Jewish theology by reclaiming its exegetical continuum with its Hebraic origins, see James A. Diamond, *Jewish Theology Unbound* (New York: Oxford University Press, 2018).

[214] See Arnold M. Eisen, *Rethinking Modern Judaism* (Chicago: University of Chicago Press, 1998), 100–104.

(or sender) whose presumed moral intention grants the possibility of juridical discretion, the halakhic process seems more liable to paralysis.[215] It is not surprising that William James objected to the Spinozistic type of mechanization of God, conceiving him as pantheistic and a nonpersonal cosmic force.[216] James rather insisted that God's personality is intrinsic to his ability to function as a God pragmatically conceived. This insight might surprise many who identify religious piety with tough-mindedness.

Religious beliefs may surely lead—like many other beliefs—to violence. One may wonder whether the problem is the very belief or its content—for example, which God image is present in the believer's mind and whether it is a dialogical God, or perhaps a tyrannical, gnostic god. In the halakhic case it seems that there may be a postulatic need for an accessible divine person or author (or a "God who comes to mind," to paraphrase Emmanuel Levinas). This transcendental hermeneutical requirement can be termed as the "pragmatic postulate of personal divine presence."[217] When such a divine personality is conceived of as dead, it might weaken the ability to practice and apply the PM, for the reasons proposed above.

B. Conclusion

This article aimed to explain what the PM is, what its prominent applications in Jewish tradition are, and what more specifically are the applications of the PM within the writings of RḤH. Finally, I reflected on the conceivable theological-intellectual prerequisites for the application of the PM. Clearly, the question concerning the application of the PM pertains to the sages of every religion (in modernity and prior), from the viewpoint of its own heritage.[218] The diagnosis may differ significantly, though, because of some traditionally rooted differences.[219] By analyzing Jewish thought vis-à-vis CAP, the normative properties of the PM were discerned. This study hence invites further inquiries into metaphysical, ethical, theological, theurgic, and exegetical elements of religions and their overarching philosophical frameworks.

[215] On the idea that a sober religiosity indeed liberates humans (rather than enslaves them) by permitting the performance of action in the world that would otherwise be self-prohibited by humans, see Nathan Lopes Cardozo, *Jewish Law as Rebellion* (Jerusalem: Urim, 2018), 254–57.

[216] William James, *The Varieties of Religious Experience* (New York: Longmans, 1905), 464–65, endorses Auguste Sabatier's view on the nature of prayer. For this reason, conceptions of God as "power" (even if as a power leading to moral corrigibility, as in M. M. Kaplan) are pragmatically problematic; see my "20th Century Jewish Thought," 302–9.

[217] On the Kantian idea of transcendental postulates as protopragmatist, see n. 41 above.

[218] See Peter Ochs's comment (cited in n. 60 above) on how a pragmatist perspective entails interpretive situatedness.

[219] The recognition of such differences, as well as the identification of the role that the PM plays within religious traditions, may contribute to the advancement of interreligious dialogue, and to the refinement of postsecularism theories. These theories, in their turn, seem to have much in common with CAP, as we learn from the pragmatist inclinations of Habermas, Taylor, MacIntyre, and others.